# TEXAS REGISTER

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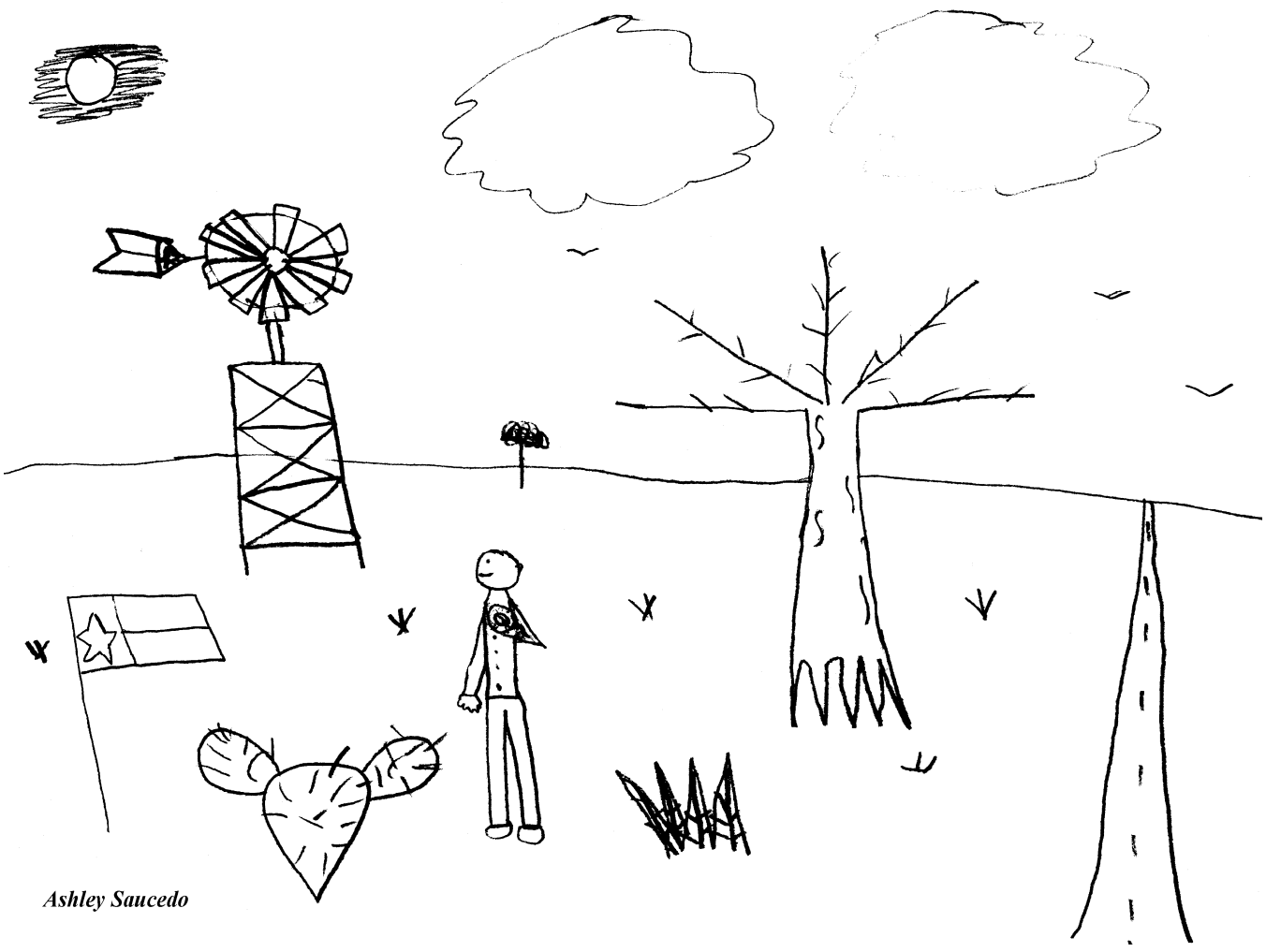

*Ashley Saucedo*

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# IN THIS ISSUE

# Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/open/index.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
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**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE ATTORNEY GENERAL

**The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.**

**An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.**

**An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)**

## Request for Opinion

**RQ-0937-GA**

**Requestor:**

The Honorable Jeff Wentworth

Chair, Senate Select Committee on Veteran's Health

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Authority of a type A general law municipality to adopt and enforce a firearm discharge ban on property located within its corporate limits (RQ-0937-GA)

**Briefs requested by February 11, 2011**

*For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.*

TRD-201100117
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: January 12, 2011

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## Opinions

**Opinion No. GA-0830**

Raymund A. Paredes, Ph.D.

Commissioner of Higher Education

Texas Higher Education Coordinating Board

Post Office Box 12788

Austin, Texas 78711

Re: Authority of a community college to purchase liability insurance to cover claims arising from the operation of a child-care center (RQ-0846-GA)

**S U M M A R Y**

A college could purchase liability insurance under section 42.049 of the Human Resources Code without violating article III, section 52(a), of the Texas Constitution.

**Opinion No. GA-0831**

The Honorable Jo Anne Bernal

El Paso County Attorney

500 East San Antonio, Room 503

El Paso, Texas 79901

Re: Whether chapter 161 of the Local Government Code is applicable to the District Attorney of the 34th Judicial District and staff (RQ-0865-GA)

**S U M M A R Y**

A county ethics code adopted under chapter 161, Local Government Code, applies to "county public servants." The term county public servant includes attorneys at law when participating in the performance of a county governmental function. Accordingly, when and to the extent the District Attorney of the 34th Judicial District and his or her attorneys participate in the performance of a county governmental function, they are county public servants subject to the El Paso County Code of Ethics. Because they are not county public servants, the non-attorney staff members of the District Attorney are not subject to the El Paso County Code of Ethics.

**Opinion No. GA-0832**

The Honorable Leticia Van de Putte

Chair, Committee on Veterans Affairs and Military Installations

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether the Edgewood Independent School District may change the date of its general election for school trustees to the uniform election date set by statute in May of odd-numbered years (RQ-0893-GA)

**S U M M A R Y**

Through Election Code section 41.0052, the Legislature has prohibited a school district from changing the date for general elections of officers to a date other than the November uniform election date. Edgewood Independent School District therefore may not move its general election date to the uniform election date in May at this time.

**Opinion No. GA-0833**

The Honorable Jeff Wentworth

Chair, Senate Select Committee on Veterans' Health

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether a metropolitan transit authority may, under section 451.616 of the Transportation Code, charge a withdrawn city for special transit services provided to the city's residents with disabilities (RQ-0899-GA)

**S U M M A R Y**

Sections 451.610 and 451.616 of the Transportation Code are not retroactive statutes in violation of article I, section 16 of the Texas Constitution. Capital Metro is therefore not prohibited by that constitutional provision from charging the City of West Lake Hills for transportation services provided to the City's residents with disabilities pursuant to the Transportation Code.

*For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.*

TRD-201100086

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: January 10, 2011

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# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 1. ADMINISTRATION

## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

## CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY

## SUBCHAPTER C. UTILIZATION REVIEW

### 1 TAC §371.216

The Texas Health and Human Services Commission (HHSC) proposes new §371.216, concerning waiver of extrapolation, in Chapter 371, Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity.

Background and Justification

The new section is proposed to clarify procedural questions arising out of the conversion from the Texas Index for Level of Effort (TILE) classification system and provider payment methodology to the federal Resource Utilization Group (RUG) classification system and provider payment methodology.

The HHSC Office of Inspector General (OIG) routinely reviews a nursing facility's level of care assessments of its Medicaid residents to safeguard against fraud, waste, or abuse. HHSC-OIG Utilization Review program monitors resident assessment claim(s) to ensure that payments for Medicaid services are appropriate. The reviews identify correct and incorrect payments. HHSC recovers overpayments and reimburses underpayments to the nursing facility. Prior to 2008, the Texas Department of Aging and Disability Services (DADS) made Medicaid reimbursements to nursing facilities using the TILE classification system and provider payment methodology.

In 1995, the 74th Legislature passed House Bill 867, amending the Health and Safety Code, Chapter 242, requiring DADS to base Medicaid reimbursements to nursing facilities on the Centers for Medicaid and Medicare Services' RUG classification system and provider payment methodology. After a series of delays, HHSC set a target date of September 1, 2008, for the conversion. HHSC promulgated new administrative rules to govern its utilization review of nursing facilities.

HHSC's current rule in 1 TAC §371.214(r) provides that in calculating any overpayment, the HHSC-OIG will extrapolate to the population, and the extrapolation would be applied to the RUG classifications found in error.

As a concession to stakeholders, HHSC-OIG agreed to a phase-in period for extrapolating overpayments. This was designed to allow nurse reviewers and providers to acquaint themselves with the effects of the extrapolation methodology. Section 371.214(r)(2)(C)(ii) provides that for utilization reviews conducted between September 1, 2008, through August 31, 2009, HHSC-OIG would extrapolate only when the error rate exceeded 25%. The phase-in period gradually decreased the extrapolation thresholds until the last period, March 1, 2010, through August 31, 2010, when the threshold was set at 15%. Section 371.213(r)(2)(C)(ii)(IV) provides that for utilization reviews conducted on or after September 1, 2010, HHSC-OIG will extrapolate to the population in all cases.

Due to unforeseen delays in developing the automation to support RUG-based utilization reviews, HHSC-OIG is still unable to begin conducting reviews under the new system. It is currently anticipated that RUG reviews will not begin until October or November 2010, after all of the extrapolation grace periods have lapsed. The rule contains no exceptions for extrapolating the overpayment.

HHSC-OIG perceives a need to create a mechanism whereby it may waive extrapolated overpayments in certain circumstances. This rule is designed for two basic purposes: (1) to alleviate some of the concerns of the provider community about forfeiting the phase-in periods that were designed to allow all parties to gain familiarity with the RUG reviews; and (2) to provide an ongoing remedy for waiving extrapolation if the results would be so burdensome as to threaten the financial stability of the provider.

Section-by-Section Summary

Proposed new §371.216 provides that the inspector general may waive the calculation of an overpayment by extrapolation to any or all of the RUG classifications found in error. The proposed new section also describes the procedure by which a provider may request a waiver of extrapolation and provide sufficient evidence to demonstrate good cause for the waiver.

The HHSC-OIG may request additional evidence or documentation from the provider or other informational sources in evaluating the request. The inspector general is vested with the sole discretion to evaluate the provider's showing of good cause and to determine whether waiver of extrapolation is warranted. The decision to grant, deny, or modify a request for waiver of extrapolation is not subject to administrative or judicial review.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for the first five years the proposed new section is in effect, enforcing or administering the new section does not have foreseeable implications relating to costs or revenues of state or local governments.

Small Business and Micro-business Impact Analysis

There is no anticipated adverse economic effect on small businesses or micro-businesses, or on businesses of any size, as a result of administering the proposal. This rule does not impose any new requirements on providers or change any substantive Medicaid policies. This rule is expected to create a positive economic effect on small businesses or micro-businesses.

Cost to Persons and Effect on Local Economies

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this proposal. The proposal will not affect a local economy. These rules will not have an impact on local employment.

Public Benefit

Karen Nelson, Chief Counsel for the Office of Inspector General, determined that for the first five years the proposal is in effect, the public benefit expected as a result of enforcing the proposal is that the state will be able to retain nursing facility providers in the Medicaid program who otherwise could be bankrupted by an extrapolated overpayment.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private real property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Texas Government Code.

Public Comment

Written comments on the proposal may be submitted to Lisa Barragan, Texas Health and Human Services Commission, P.O. Box 85200, MC H-400, Austin, Texas 78708-5200; by fax to (512) 833-6484; or by e-mail to lisa.barragan@hhsc.state.tx.us within 30 days of publication in the *Texas Register.*

Legal Authority

The new section is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient operation of the Medicaid program; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This proposal is related to Texas Health and Safety Code §242.222, which mandates the form of the automated patient care and reimbursement system of nursing facilities. No other statutes, articles, or codes are affected by this proposal.

*§371.216. Waiver of Extrapolation.*

(a) The inspector general may waive the calculation of an overpayment by extrapolation, as described in §371.214(r)(2) of this subchapter (relating to Resource Utilization Group Classification System), to any or all of the Resource Utilization Group (RUG) classifications found in error.

(b) A provider must request a waiver of extrapolation in writing on or before the 15th calendar day after receipt of the final notice of overpayment. The provider's request for waiver of extrapolation must include sufficient evidence to demonstrate good cause for the waiver. The Office of the Inspector General may request additional evidence or documentation from the provider or other informational sources in evaluating the request.

(c) The inspector general is vested with the sole discretion to evaluate the provider's showing of good cause and to determine whether waiver of extrapolation is warranted.

(d) The decision to grant, deny, or modify a request for waiver of extrapolation is not subject to administrative or judicial review.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2011.

TRD-201100065
Steve Aragon
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: February 20, 2011
For further information, please call: (512) 424-6576

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# CHAPTER 372. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAMS
## SUBCHAPTER B. ELIGIBILITY
## DIVISION 9. CRIMINAL ACTIVITY

**1 TAC §372.501**

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §372.501, concerning disqualifications due to criminal activity, in Chapter 372, governing the Temporary Assistance for Needy Families (TANF) program and the Supplemental Nutrition Assistance Program (SNAP).

Background and Justification

The purpose of the amendment is to correct an error in the section. The rule currently states that a person is disqualified from both TANF and SNAP benefits if the person is convicted of a felony drug offense committed on or after April 1, 2002. However, in accordance with federal law (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)), HHSC disqualifies a person from SNAP benefits if the person is convicted of a felony drug offense committed after August 22, 1996.

Disqualification from TANF for a felony drug offense has a different implementation date than disqualification from SNAP for the same offense, because HHSC operated under a waiver of this

provision for the TANF program from 1996 until 2002. HHSC was not required to implement the penalty imposed by PRWORA until April 1, 2002.

Correction of this error will bring the rule in line with current policy and federal law.

Section-by-Section Summary

The amendment divides the section into subsections (a) and (b). Subsection (a) speaks exclusively to the disqualification from TANF for certain criminal activities. Subsection (b) speaks exclusively to the disqualification from SNAP for certain criminal activities, including disqualification for a felony drug offense committed after August 22, 1996.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of the state or local governments. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

Small Business and Micro-business Impact Analysis

Ms. Rymal has determined that there will be no effect on small businesses or micro-businesses to comply with the proposal, because the proposal does not require them to alter their business practices.

Public Benefit

Lawrence M. Parker, Deputy Executive Commissioner for Social Services, has determined that, for each year of the first five years the amendment is in effect, the anticipated public benefit expected as a result of enforcing the amendment is that it will ensure that the rule reflects current policy and federal law, and it will eliminate confusion on the part of the public.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Texas Government Code.

Public Comment

Written comments on the proposal may be submitted to Boyd Graves, Health and Human Services Commission, Office of Family Services, MC-2039, 909 West 45th Street, Austin, Texas 78751, or by e-mail to boyd.graves@hhsc.state.tx.us, within 30 days after publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for February 7, 2011, at 9:00 a.m. in Room 164 of the HHSC - MHMR Center, 909 West 45th Street, Building 2, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Graciela Reyna at (512) 206-4778.

Legal Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; Texas Government Code, §31.001, which authorizes HHSC to administer financial assistance programs (TANF); and Texas Government Code, §33.006, which authorizes HHSC to administer the food stamp program (SNAP).

The amendment affects Texas Government Code, Chapter 531; and Human Resources Code Chapter 31 and Chapter 33. No other statutes, articles, or codes are affected by this proposal.

*§372.501. Disqualifications Due to Criminal Activity.*

(a) In TANF [~~and SNAP~~], a person is disqualified from receiving benefits if the Texas Health and Human Services Commission (HHSC) determines the person:

(1) is a fugitive (a person fleeing to avoid prosecution or confinement for a felony criminal conviction, or found by a court to be violating federal or state probation or parole); or

(2) is convicted of a felony drug offense (not deferred adjudication) in Texas or another state committed on or after April 1, 2002.

(b) In SNAP, a person is disqualified from receiving benefits if HHSC determines the person:

(1) is a fugitive (a person fleeing to avoid prosecution or confinement for a felony criminal conviction, or found by a court to be violating federal or state probation or parole); or

(2) is convicted of a felony drug offense (not deferred adjudication) in Texas or another state committed after August 22, 1996.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2011.

TRD-201100066
Steve Aragon
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: February 20, 2011
For further information, please call: (512) 424-6576

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## CHAPTER 395. CIVIL RIGHTS

The Texas Health and Human Services Commission (HHSC) proposes new Chapter 395, Civil Rights, Subchapter A, General Provisions, consisting of §395.1, concerning purpose, and §395.2, concerning definitions; Subchapter B, Responsibilities of Health and Human Services Agencies, consisting of §395.11, concerning health and human services (HHS) agency responsibilities, and §395.12, concerning role of the HHSC Civil Rights Office (CRO); Subchapter C, Complaints, consisting of §395.21,

concerning complaints and complaint procedures, and §395.22, concerning complaint records; Subchapter D, Compliance Monitoring, consisting of §395.31, concerning HHS agency compliance, and §395.32, concerning contractor compliance; and Subchapter E, Employment Practices, consisting of §395.41, concerning employment practices.

Background and Justification

The purpose of the new sections is to establish rules regarding civil rights that will apply to all HHS agencies. For purposes of this chapter, an HHS agency is defined as HHSC and the Texas health and human services agencies identified in §531.001(4) of the Government Code. The agencies currently identified in §531.001(4) of the Government Code are the Department of Aging and Disability Services, the Department of Assistive and Rehabilitative Services, the Department of Family and Protective Services, and the Department of State Health Services.

The new sections are proposed to: (1) implement federal and state civil rights laws and regulations that prohibit discrimination in programs and services administered directly by or through contract or other arrangements with the HHS agencies; (2) describe the civil rights responsibilities of the HHS agencies; and (3) establish the role of the HHSC CRO in implementing federal and state civil rights laws and regulations governing HHS agencies.

Section-by-Section Summary

Proposed new §395.1 describes the purpose of the chapter and its application to HHS agencies and the entities with which they contract to provide programs and services.

Proposed new §395.2 provides the definition of words and terms used in the chapter.

Proposed new §395.11 describes the responsibilities HHS agencies have in the areas of prohibiting discrimination, accessibility, affirmative action, providing information to the public, and staff training.

Proposed new §395.12 describes the role of the HHSC CRO in providing information and oversight to HHS agencies and contractors concerning civil rights issues.

Proposed new §395.21 provides the procedures for filing a civil rights complaint and the HHS agency procedures for addressing complaints resulting from alleged discrimination.

Proposed new §395.22 governs the maintenance and disclosure of complaint records in accordance with federal and state requirements, and requires HHS agencies to make complaint records available for review to appropriate federal and state officials.

Proposed new §395.31 describes HHSC CRO compliance reviews and the legal basis for such reviews.

Proposed new §395.32 prohibits HHS agencies from participating in contracts or other arrangements providing services and benefits that have the effect of subjecting applicants or participants to discrimination. The section also establishes that the HHSC CRO may conduct compliance reviews of contractors and service providers.

Proposed new §395.41 prohibits HHS agencies from discriminating in their employment and recruitment practices.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for the first five years the proposed new sections are in effect, enforcing or administering the new sections does not have foreseeable implications relating to costs or revenues of state or local governments. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

Small Business and Micro-business Impact Analysis

Ms. Rymal has determined that there will be no effect on small businesses or micro-businesses to comply with the proposal, because the new rules will not require them to alter their business practices.

Public Benefit

Rolando Garza, Deputy Executive Commissioner for System Support Services, has determined that, for each year of the first five years the new sections are in effect, the anticipated public benefit expected as a result of enforcing the new sections is that rules implementing civil rights policies for all HHS agencies will be in place in the HHSC rule base.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Texas Government Code.

Public Comment

Written comments on the proposal may be submitted to Paula Traffas, Health and Human Services Commission, Civil Rights Office, MC-W206, 701 W. 51st St, Austin, Texas 78751, or by e-mail to paula.traffas@hhsc.state.tx.us, within 30 days after publication of this proposal in the *Texas Register.*

## SUBCHAPTER A. GENERAL PROVISIONS

**1 TAC §395.1, §395.2**

Legal Authority

The new sections are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority.

The new sections affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

*§395.1. Purpose.*

(a) The purpose of this chapter is:

(1) to implement federal and state civil rights laws and regulations that prohibit discrimination in programs and services admin-

istered directly by or through contract or other arrangements with the HHS agencies;

(2) to describe the civil rights responsibilities of the HHS agencies; and

(3) to establish the role of HHSC's Civil Rights Office in implementing federal and state civil rights laws and regulations governing HHS agencies.

(b) This chapter applies to HHS agencies and the entities with which they contract to provide programs and services.

*§395.2. Definitions.*

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise.

(1) Applicant--A person who applies in writing, electronically, orally, or through a designated representative to participate in a program funded, in whole or in part, by HHSC or an HHS agency.

(2) Complainant--A person who alleges discrimination in access to or the delivery of program services or benefits funded, in whole or in part, by an HHS agency on the basis of race, color, national origin, age, sex, disability, religion, or political belief. (Not all bases apply to all programs.) Political belief is considered a protected class only in the Supplemental Nutrition Assistance Program (SNAP). Other groups may be added as protected classes pursuant to applicable federal or state statutes or rules.

(3) Complaint--An oral or written allegation of discrimination or retaliation made by a complainant.

(4) Contractor--An entity that contracts or agrees through other arrangements with a state agency to provide services or benefits on behalf of an HHS agency. This includes any subcontractor that provides services or benefits on behalf of an HHS agency.

(5) Discrimination--Treatment of an individual that is based on his or her membership in a legally protected class and that has an adverse effect on the individual.

(6) Electronic and information resources (EIR)--Information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. EIR includes telecommunication products, information kiosks, transaction machines, websites, multimedia, and office equipment.

(7) HHS agency--The Texas Health and Human Services Commission and the Texas health and human services agencies identified in Government Code §531.001(4).

(8) HHSC--The Texas Health and Human Services Commission.

(9) HHSC Civil Rights Office (CRO)--The functional area within HHSC responsible for ensuring that the HHS agencies comply with applicable state and federal civil rights laws and regulations as well as HHSC's civil rights policies and procedures.

(10) Limited English proficiency (LEP)--A term describing individuals who do not speak English as their primary language and who have limited ability to read, speak, write, or understand English.

(11) Participant--An individual who receives assistance, services, or benefits under any HHS agency program or service.

(12) Protected class--A group or class of persons having a characteristic, quality, belief, or status defined by federal and state civil rights laws and regulations as protected from discrimination. Protected classes or groups, which differ between programs, include race, color, national origin, sex, age, religion, or disability, and may include political belief. Political belief is considered a protected class only in SNAP. Veteran status is a protected class only as to employment-related complaints pursuant to state and federal law. Other groups may be added as protected classes pursuant to applicable federal or state statute or rules.

(13) Retaliation--Adverse treatment of an individual because he or she filed a complaint, participated in the complaint process, or otherwise opposed discriminatory practices.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2011.

TRD-201100096
Steve Aragon
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: February 20, 2011
For further information, please call: (512) 424-6576

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## SUBCHAPTER B. RESPONSIBILITIES OF HEALTH AND HUMAN SERVICES AGENCIES

### 1 TAC §395.11, §395.12

Legal Authority

The new sections are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority.

The new sections affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

*§395.11. HHS Agency Responsibilities.*

(a) Discrimination and retaliation prohibited. The HHS agencies prohibit:

(1) discrimination in the administration and operation of an HHS program or service, directly or through contractual or other arrangements, on the basis of race, color, national origin, sex, age, disability, religion, or, for the Supplemental Nutrition Assistance Program (SNAP) only, political belief; and

(2) retaliation against an individual because the individual opposed discriminatory practices.

(b) Accessibility.

(1) HHS agency programs, services, and facilities must:

(A) be accessible to all people regardless of race, color, national origin, sex, age, disability, religion, or, for SNAP only, political belief;

(B) provide equal opportunities for community and faith based organizations to participate as program and service providers; and

(C) incorporate written guidelines provided by the HHSC Civil Rights Office (CRO) regarding contractors' responsibilities under civil rights laws, regulations, and HHS civil rights policies and procedures into the HHS agency's services delivery contracts.

(2) HHS agencies must take reasonable steps to give applicants and participants with limited English proficiency (LEP) access to HHS agency programs and services.

(3) HHS agencies must take reasonable steps to give persons with disabilities access to HHS agency programs and services, including electronic and information resources.

(c) Affirmative action. In compliance with federal law, an HHS agency may take affirmative action when administering a program to overcome the effects of prior discrimination on the basis of race, color, or national origin, or conditions that result in limiting participation because of the individual's protected class.

(d) Public information.

(1) HHS agencies must inform the public, applicants, participants in HHS agency programs (including any other agency, institution, or organization participating in a program through contractual or other arrangements), and other interested persons of the following:

(A) their rights under HHS civil rights policies, including the right to file a civil rights complaint of discrimination;

(B) the addresses of the HHSC CRO where complaints may be filed; and

(C) contact information for appropriate external civil rights enforcement agencies.

(2) HHS agencies provide the information required in paragraph (1) of this subsection through agency websites, written materials, prominently displayed posters, and other methods of communication; and upon request.

(3) HHS agencies must take reasonable steps to make civil rights policies available in appropriate languages to applicants who have limited English proficiency (LEP). HHS agencies must provide similar information through alternative means to applicants and participants with disabilities.

(e) Staff training.

(1) HHS agencies must inform agency employees about the protections against discrimination provided by state and federal civil rights laws, regulations, and HHS civil rights policies and procedures. HHS agencies must make the information available by:

(A) publishing HHS civil rights policies in agency circulars and memoranda and on agency intranets;

(B) publishing the non-discrimination policy in agency newsletters, annual reports, and other media; and

(C) including non-discrimination policy materials in employee orientation, in-service training, management training, and supervisor training programs.

(2) HHS agencies must provide periodic civil rights training to employees of HHS agencies. HHS agencies must take reasonable steps to give employees with disabilities meaningful access to the training.

(3) HHS civil rights training includes curriculum prescribed by applicable civil rights statutes and regulations, methods of administration, instructions, and guidance. Training curriculum should include:

(A) requirements of the Civil Rights Act of 1964, as amended; the Americans with Disabilities Act of 1990, as amended; Section 504 of the Rehabilitation Act of 1973; the Food and Nutrition Act of 2008; Title IX of the Education Amendments of 1972; and other applicable state and federal civil rights laws and regulations;

(B) procedures for filing and investigating complaints of discrimination;

(C) requirements for language assistance;

(D) collection and use of data; and

(E) civil rights compliance review of policies and procedures.

*§395.12. Role of the HHSC Civil Rights Office.*

(a) The HHSC Civil Rights Office (CRO) provides information about civil rights policies and procedures to the HHS agencies. The HHSC CRO provides guidance and technical assistance to each HHS agency so that personnel with supervisory responsibilities in HHS agencies and HHS agency contractors are able to address compliance issues related to civil rights laws, regulations, and HHS civil rights policies and procedures.

(b) The HHSC CRO staff provides information about applicable civil rights laws and regulations to institutions, organizations, contractors, and individuals upon request.

(c) The HHSC CRO receives and investigates complaints alleging violations of civil rights laws, regulations, and HHS civil rights policies and procedures.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2011.

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Steve Aragon
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: February 20, 2011
For further information, please call: (512) 424-6576

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## SUBCHAPTER C. COMPLAINTS

**1 TAC §395.21, §395.22**

Legal Authority

The new sections are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority.

The new sections affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

*§395.21. Complaints and Complaint Procedures.*

(a) The HHSC Civil Rights Office (CRO) sets policies and procedures to address complaints resulting from alleged discrimination.

(b) A complainant may file a complaint against an HHS agency or an HHS agency contractor with the HHSC Civil Rights Office (CRO) or with an HHS agency by personal contact, letter, e-mail, Internet, telephone, or other means.

(1) A complainant must file a complaint within 180 calendar days after the alleged discriminatory act. The HHSC CRO Director may extend the time period for filing a complaint.

(2) When an HHS agency employee or contractor receives a complaint, the employee or contractor must forward the complaint within 10 calendar days to the HHSC CRO for processing.

(3) The HHS agency employee or contractor must advise the complainant, at the services delivery point, of the right to file a complaint with the federal enforcement agency or the HHSC CRO, or both entities.

(c) The HHSC CRO will examine and process the complaint promptly if it determines that a complaint will be investigated.

*§395.22. Complaint Records.*

(a) The HHSC Civil Rights Office (CRO) maintains records pertaining to the complaint according to applicable federal and state records retention requirements.

(1) The records include the details of the investigation as well as any action taken by the HHS agency.

(2) HHSC CRO discloses information pertaining to the complaint of discrimination and the investigation only when necessary for the investigation, in resolving the complaint, and in accordance with the Texas Public Information Act.

(b) HHS agencies must make complaint records available for review to appropriate federal and state officials.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER D. COMPLIANCE MONITORING

**1 TAC §395.31, §395.32**

Legal Authority

The new sections are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority.

The new sections affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

*§395.31. HHS Agency Compliance.*

(a) The HHSC Civil Rights Office (CRO) periodically conducts compliance reviews to determine if programs and services administered by HHS agencies, directly or through contractual, licensing, or other arrangements, are in compliance with applicable civil rights requirements. The HHSC CRO Director, or designee, determines the offices, programs, or facilities that will be reviewed and the time frames in which they will be reviewed for civil rights compliance.

(b) HHSC CRO's compliance review standards, methods, and activities are set in accordance with civil rights laws, regulations, methods of administration, instructions, and guidance.

*§395.32. Contractor Compliance.*

(a) HHS agencies must not participate in a contract or other arrangement for the provision of services and benefits that has the effect of subjecting applicants or participants to discrimination.

(1) HHS agencies must include a requirement in each contract or other arrangement that the contractor or other provider of services and benefits must provide services and benefits without discrimination.

(2) If required by federal or state law, regulation, or policy, HHS agencies must obtain a written assurance from each service delivery contractor or other provider that the contractor or provider must comply with all applicable civil rights laws and regulations.

(3) HHS agencies must instruct employees and contract staff who regularly visit contracted service facilities and have contact with families of applicants and participants to notify the HHSC Civil Rights Office (CRO) of any suspected discriminatory act, or any discrepancies in the intake, processing, and treatment of applicants and participants that appear to be based on a protected class.

(b) The HHSC CRO may conduct periodic compliance reviews of contractors and other providers of services or benefits not directly provided by HHSC or an HHS agency.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER E. EMPLOYMENT PRACTICES

**1 TAC §395.41**

Legal Authority

The new section is proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority.

The new section affects Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

*§395.41. Employment Practices.*

HHS agencies must not discriminate in their employment and recruitment practices. HHSC maintains comprehensive policies and procedures applicable to all the HHS agencies intended to ensure that each HHS agency's employment and recruitment practices will not discriminate or retaliate or have a discriminatory effect.

(1) HHS agencies must prominently display written materials on Equal Employment Opportunity in their offices and on agency websites.

(2) The HHSC Civil Rights Office will issue workforce analyses and will work with HHS agencies to develop recruitment plans as required by state or federal laws and regulations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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# TITLE 16. ECONOMIC REGULATION

## PART 1. RAILROAD COMMISSION OF TEXAS

### CHAPTER 3. OIL AND GAS DIVISION

**16 TAC §3.79, §3.86**

The Railroad Commission of Texas (Commission) proposes to amend §3.79, relating to Definitions, and §3.86, relating to Horizontal Drainhole Wells, to update and modernize the regulatory approach to new and evolving technologies regarding horizontal drilling and unconventional resource development in Texas. The Commission proposes to amend §3.79 to add new, and update existing, definitions. The Commission proposes to amend §3.86 to update, modernize, and clarify the rule, and incorporate for statewide application elements from numerous recent field rules relating to spacing of horizontal drainhole wells, including the concept of the "box rule," production sharing agreements, stacked lateral wells, and required information to be submitted with completion reports. The Commission also proposes to clarify notice requirements in certain circumstances to incorporate the concept of non-perforated zones (NPZs).

The Commission regulates the drilling of, and the assignment of allowable to, horizontal wells either through §3.86 (Statewide Rule 86 or Rule 86) or field rules specific to the field being developed. The Commission adopted Rule 86, effective June 1, 1990, in response to the increase in the number of horizontal drainhole wells being drilled in Texas. Rule 86 applies to all horizontal drainhole wells. Horizontal drainhole wells must comply with the applicable lease line and between well spacing rule as to each and every point of the well within the correlative interval, except where special field rules provide to the contrary.

Over the years, the special field rules for horizontal drainhole wells have become increasingly complicated. A relatively recent development initially associated with urban drilling of horizontal drainhole wells is the concept of NPZs. An NPZ is the interval of a horizontal drainhole well that an operator has represented, as part of the permitting process, will not have any perforations or other take points. The Commission has become increasingly concerned with potential isolation issues related to NPZs.

Hydraulic fracturing is an operation in which fluid is pumped down a well into the target formation under pressure sufficient to cause the formation to fracture, forming passages through which the hydrocarbon can flow into the wellbore. Hydraulic fracturing plays a key role in the development of virtually all unconventional gas resources in Texas.

Furthermore, the proliferation of fields for which operators are requesting NPZs has greatly impacted the Commission's workflow and dramatically increased the burden on Commission staff. The Commission developed an online permit application filing system to speed the processing of applications for a permit to drill. One major advantage of the online filing system is the ability of the system to automatically perform upfront checks for compliance with Statewide Rules 37 and 38, §3.37 and §3.38 of this title (relating to Statewide Spacing Rule, and Well Densities, respectively). However, many of the special provisions in field rules governing horizontal drainhole wells do not allow for such computerized checks and Commission staff must manually review the applications for drilling permits in approximately 60 fields as of the date of this proposal. Commission staff must manually review the application in any one of those fields to determine if an exception to Rule 37 or 38 is required and to review the certificate of pooling authority to verify that the entire wellbore is at a legal location. Such manual reviews are much more complicated and time-consuming than reviews of drilling permit applications for vertical wells and other horizontal drainhole wells and have doubled the Commission's processing time for these applications.

The field rules for the Newark, East (Barnett Shale) field, producing from over 15,000 wells in over 20 Texas counties, were amended to incorporate upper and lower perforation language. However, Rule 86 was not amended to incorporate this language. As development of the Newark, East (Barnett Shale) field continued, operators began moving into urban areas. Operators in the Barnett Shale field advised the Commission that NPZs are necessary to deal with land speculators who buy up small tracts of land in areas of possible development. The operators proposed new units consisting of a large number of small lots, not all of which were always leased. Some drilling permit applications submitted by operators requesting exceptions to §3.37 of this title in these urban areas drew protests as a result of the notice requirements of Rule 37, and some operators used NPZs to avoid notice required by Rule 37.

Over the past two years, the Commission has adopted special field rules for other fields, including the Carthage (Haynesville) Field in Panola County (December 15, 2009, Railroad Commission Oil & Gas Docket No. 06-0262000) and the Hawkville (Eagleford Shale) Field in La Salle County (November 24, 2009, Railroad Commission Oil & Gas Docket No. 01-0263175). On February 9, 2010, the Commission signed an order (Oil & Gas Docket No. 01-0263788) to merge three additional Eagleford Fields, the Big Reef (Eagleford), the Acorn (Eagleford), and the Intrepid Fields into the Hawkville (Eagleford Shale) Field into the Hawkville Field. On March 9, 2010, the Commission adopted special field rules in Oil & Gas Docket No. 02-0264010 for the Eagleville (Eagle Ford) Field (these special rules, which originally became effective on March 3, 1986, have been amended on six subsequent occasions). Also, the Commission recently (November 30, 2010) adopted temporary field rules for the Eagleville (Eagle Ford-1 and Eagle Ford-2) Fields in various South Texas counties.

Upon receipt of a drilling permit application, Commission staff must first identify whether or not there are unleased tracts in the unit. If there are unleased tracts in the unit, staff must determine whether or not the proposed wellbore is a legal distance from those unleased tracts. If any tracts are affected, staff must verify that the mineral owner has been identified on a notice of applica-

tion service list, a waiver has been submitted for that owner, or that the plat clearly indicates an NPZ along the drainhole lateral. The operator must delineate NPZ intervals on the plat filed in support of Form W-1, Application for Permit to Drill, Recomplete, or Re-Enter. There may be several NPZs on the plat submitted with the drilling permit application and staff must determine whether or not all affected unleased tracts have been accounted for on a service list, an NPZ, or a waiver. Commission staff must determine whether or not proper notice has been given for each drilling permit application.

Under Rule 37, when the applicant only requests an exception to the minimum lease-line spacing requirement (lease line spacing), the applicant is required to file a list of the mailing addresses of all affected persons, who, for tracts closer to the well than the greater of, one-half of the prescribed minimum between-well spacing distance or the minimum lease-line spacing distance, include: (1) the designated operator; (2) all lessees of record for tracts that have no designated operator; and (3) all owners of record of unleased mineral interests. When the applicant requests an exception to the minimum between-well spacing requirement of Rule 37, the applicant is required to file the mailing addresses of (1) the designated operator; (2) all lessees of record for tracts that have no designated operator; and (3) all owners of record of unleased mineral interests, for each adjacent tract and each tract nearer to the well than the greater of, one-half the prescribed minimum between-well spacing distance or the minimum lease-line spacing. The Commission may determine that such a person is not affected only upon written request and a showing by the applicant that: (1) competent, convincing geological or engineering data indicate that drainage of hydrocarbons from the particular tracts subject to the request will not occur due to production from the proposed well; and (2) notice to the particular operators and unleased mineral interest owners would be unduly burdensome or expensive.

In many cases, operators have submitted to the Commission drilling permit applications proposing perforations on a few feet of a lateral that is proposed to be several thousand feet in length. The operator subsequently submitted numerous amended applications requesting additional perforated zones along the lateral. In other cases, operators have submitted to the Commission drilling permit applications for which Commission staff determines that an exception to Rule 37 is required. The applicant then submits an amended application that includes one or more NPZs such that the Rule 37 exception and attendant notice are not required. In some cases, the operator has requested the exception to Rule 37 and has provided notice, which draws protests necessitating a hearing, and, only after the protestants appear for the hearing, has submitted an amended application with NPZs, rendering the Rule 37 exception and hearing unnecessary. In each of these cases, Commission staff must review and process multiple versions for a single wellbore without additional remuneration to the Commission. In addition, protestants often have expended time and money to travel to participate in a hearing only to be advised that the hearing is no longer necessary.

*Comments received during a previous review of Chapter 3*

In 2009, in response to publication of its intent to review Chapter 3 of this title (relating to Oil and Gas Division) pursuant to Texas Government Code, §2001.039, the Commission received comments from Samson Lone Star, LLC ("Samson") regarding several rules, including §§3.37, 3.38, and 3.86. The Commission also received late-filed comments from Chesapeake Operating Inc. ("Chesapeake") on these three rules. The Commission noted at the time that amendments, repeals, or new rules are not permitted under a rule review pursuant to Texas Government Code, §2001.039, unless proposed in conjunction with the notice of review. Therefore, the Commission was precluded from adopting any of the changes suggested by Samson or Chesapeake, although the suggestions could be considered for possible future rulemaking. The Commission considered these comments in drafting this proposed rulemaking.

Both Samson and Chesapeake commented that the Commission adopted §3.86 at a time when horizontal wells were completed as open hole and recommended that the Commission amend the rule to take into consideration the advancement of cased-hole completions and other current completion trends for horizontal drainhole wells. Samson commented that, with such completions, the current rule requires excessive lease-line offsets and assigns excessive lateral length. Both Samson and Chesapeake recommended that the Commission amend §3.86 to: (1) define a take point as any point along a horizontal drainhole where oil and/or gas can be produced into the wellbore from the reservoir/correlative interval; (2) specify a lease line offset to apply to all take points along a horizontal drainhole; (3) allow the penetration point to be off-lease; (4) specify between-well spacing to apply to all take points within a horizontal drainhole; and (5) specify the lateral length to be the distance between the first take point and the last take point in a horizontal well. Samson also recommended that the Commission amend §3.86 to include the special field rules regarding stacked lateral wells that have been developed to encourage drilling wells with multiple stacked laterals to efficiently drain the reserve.

*Proposed amendments*

The Commission proposes to amend §3.79 to add new definitions for "correlative interval," "field," and "junk and trash." The term "junk and trash" is used in §3.15(f)(2)(ii), relating to Surface Equipment Removal Requirements and Inactive Wells, as adopted by the Commission effective September 10, 2010, but was not defined in any Commission rule.

The Commission proposes to amend the definitions for "common reservoir," "exploratory well," "product," and "sweet gas" to update spelling and/or correct grammar. The remaining definitions are renumbered as necessary.

The Commission proposes to amend §3.86(a) to update the definitions for "horizontal drainhole displacement," "penetration point," and "terminus," and to add new definitions for the terms "deviation box," "horizontal wellbore completion interval," "non-perforated zone or NPZ," "production sharing agreement or PSA," "PSA code sheet," "record well," "Rule 37 distance," "stacked lateral wells," and "take point."

The Commission proposes to amend §3.86(b)(1) to incorporate the concept of production sharing agreement tracts.

The Commission proposes to amend §3.86(b)(2) to incorporate the concept of a "deviation box" when determining compliance with §3.37 of this title and NPZs. The proposed amendments incorporate Commission practice to allow for administrative approval of an exception to §3.37 for a well with take points on the horizontal drainhole less than a Rule 37 distance from a lease line, property line, or subdivision line if the operator declares an NPZ such that no take points on the horizontal drainhole are within a Rule 37 distance of such line. If, subsequent to receiving a permit for a horizontal well, the operator intends to perforate within a portion of the drainhole originally restricted with an NPZ,

then the operator must amend the permit to demonstrate that the NPZ is no longer needed for the well to comply with §3.37 as a regular location, or obtain from the Commission an exception to §3.37 under the procedures set forth in that section. The proposed amendment would require a separate exception to §3.37 and the associated exception fee for each declared NPZ.

The Commission proposes to add new §3.86(b)(3), relating to procedures for designation and removal of NPZs. This new paragraph incorporates current Commission requirements and procedures and adds a new requirement relating to notice of NPZs. If an operator designates an NPZ prior to the issuance of a notice of application for a proposed horizontal drainhole well, the Commission may grant an exception to §3.37 administratively, without notice, as to any tract within a Rule 37 distance of one or more points on the horizontal wellbore but not within a Rule 37 distance of any take point. If an operator files a new plat or otherwise designates an NPZ after notice of application has been mailed but prior to final Commission action on the application, the operator must request administrative approval of an exception to §3.37 for each NPZ and provide notice of the request and of the change in the application, including a copy of the changed plat, by certified mail with proof of delivery, to each entity who was entitled to notice of the application immediately prior to the NPZ designation. The Commission may not grant the application until proof of such notice has been on file with the Commission for at least 10 days. This subsection also would require submission to the Commission with the completion report of an as-drilled plat for any horizontal drainhole well, as required by the Commission in more recent filed rules.

The Commission proposes to amend §3.86(b)(4) to incorporate the requirements related to permitting horizontal drainhole wells based on production sharing agreements.

The Commission proposes to amend §3.86(d) to clarify the requirements for proration units and to state that the horizontal displacement of an NPZ should not be included as part of the horizontal displacement for the purpose of assigning acreage. The Commission also proposes an update to the tables in subsection (d) to conform them to current Texas Register formatting requirements. The only proposed change is the label identifying the tables.

The Commission proposes to amend §3.86(e) to make conforming amendments with respect to NPZs and to incorporate the concept of, and requirements for, stacked lateral wells.

The Commission proposes to amend §3.86(f), relating to drilling permit applications and required plats, to clarify the information to be submitted with, and restrictions on, an application for a permit to drill a horizontal drainhole well and to incorporate language regarding take points.

The Commission proposes to amend §3.86(g), relating to completion reports. The proposed amendments are intended to incorporate the requirement that the operator of a horizontal drainhole well must file an as-drilled plat showing the path, penetration point, terminus, and the first and last take points of all drainholes in horizontal wells, regardless of allocation formula. In addition, in order to mitigate the potential for wellbore interference, the proposed rules would require that the operator of a horizontal drainhole well shall promptly provide copies of any directional surveys to the parties entitled to notice, upon request. And, the proposed amendments clarify the production sharing agreement information required with the completion report.

The Commission proposes to amend §3.86(h), relating to exceptions, to reorganize the subsection for clarity.

The Commission proposes new subsection §3.86(i), relating to notice to mineral owners of offsite tracts. The new subsection would clarify that an applicant for a drilling permit for a horizontal well for any penetration point not located on the same lease, pooled unit, unitized tract or production sharing agreement tract on which the well is permitted (an offsite tract) must give 21 days notice by certified mail, return receipt requested to the mineral owners of the offsite tract. For the purposes of this rule, the mineral owners of the offsite tract are the designated operator; all lessees of record for the offsite tract where there is no designated operator; and all owners of unleased mineral interests where there is no designated operator or lessee. The proposed new subsection goes on to state that, in providing such notice, applicant must provide the mineral owners of the offsite tract with a plat clearly depicting the projected path of the entire wellbore. In the event the applicant is unable, after due diligence, to locate the whereabouts of any person to whom notice is required by this rule, the applicant would be required to publish notice of this application pursuant to §1.46 of this title (relating to Notice by Publication in Oil and Gas and Surface Mining and Reclamation Nonrulemaking Proceedings). The proposed new subsection further requires that drilling permit applications filed prior to the time limits as set within §1.46 of this title would be subject to the drilling permit application being either dismissed or canceled and all fees forfeited. If the mineral owners of the offsite tract object to the location of the penetration point, the applicant may request a hearing to demonstrate the necessity of the location of the penetration point of the well to prevent waste or to protect correlative rights. Notice of offsite tract penetration is not required if written waivers of objection are received from all mineral owners of the offsite tract; or the applicant is the only mineral owner of the offsite tract.

Leslie Savage, Planning and Administration, Oil and Gas Division, has determined that for each year of the first five years that the proposed amendments will be in effect there will be fiscal implications for state government. The Commission expects that it will operate more efficiently as a result of the clarifications included in the proposed rules concerning the review and processing of applications for drilling permits and the review and processing of completion reports, but cannot quantify a specific amount of money that might be saved. In addition, the Commission has clarified that each request to amend a drilling permit to include NPZs will require an application fee.

There are no fiscal implications for local governments.

The Commission estimates that the cost of compliance with the proposed amendments for individuals, small businesses, or micro-businesses will be minor. Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, directs that, as part of the rulemaking process, a state agency prepare an economic impact statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses, and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses.

Entities that perform activities under the jurisdiction of the Commission are not required to report to the Commission their number of employees or their annual gross receipts, which are elements of the definitions of "micro-business" and "small business" in Texas Government Code, §2006.001; therefore, the Commis-

sion has no factual bases for determining whether any persons engaged in the drilling and completion of horizontal drainhole wells will be classified as small businesses or micro-businesses, as those terms are defined. Specifically, Texas Government Code, §2006.001(2), defines a "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than $6 million in annual gross receipts. Texas Government Code, §2006.001(1), defines "micro-business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has not more than 20 employees.

Based on the information available to the Commission regarding the oil and gas entities that drill or complete horizontal drainhole wells, Ms. Savage concludes that, of the businesses that could be affected by the proposed amendments, it is likely that many would be classified as a small business, and possible that some could be classified as micro-businesses, as those terms are defined in Texas Government Code, §2006.001.

The North American Industrial Classification System (NAICS) sets forth categories of business types. Operators of oil and gas wells fall within the category for crude petroleum and natural gas extraction. This category is listed on the Texas Comptroller of Public Accounts website page entitled "HB 3430 Reporting Requirements-Determining Potential Effects on Small Businesses" as business type 2111 (Oil & Gas Extraction), for which there are listed 2,784 companies in Texas. This source further indicates that 2,582 companies (92.7%) are small businesses or micro-businesses as defined in Texas Government Code, §2006.002.

The Commission anticipates that the proposed amendments will have negligible adverse economic impact on those entities engaged in the drilling and completion of horizontal drainhole wells. The majority of the proposed rulemaking only incorporates for statewide application elements from numerous recent field rules relating to spacing of horizontal drainhole wells, including the concept of the "box rule," production sharing agreements, stacked lateral wells, and required information to be submitted with completion reports. The proposed amendments also clarify notice requirements in certain circumstances. Incorporation of elements from recent field rules is expected to result in a decrease in the number of field rule hearings and, as a result, decreasing the cost a regulated entity would expend on preparing for and attending such hearings. The Commission finds that the increased clarity of the rule requirements will save both the Commission and regulated entities time and money.

It is not possible to provide a general estimate of the cost of the proposed amendments because the cost will depend upon numerous variables that cannot be quantified, including the sufficiency of the amendments to address many issues for which field rule hearings would be required. Much of the information used to make such determinations is not reported to the Commission and is treated as confidential proprietary information by regulated entities; accordingly, the Commission has insufficient information to develop even a general estimate of the cost of the amendments. However, while the Commission cannot provide a general estimate of the cost of compliance for any particular operator, the Commission can estimate the general range of the cost of compliance for those elements of the rule that could result in a cost to operators.

There are very few new requirements in the proposed amendments over and above what the Commission has been consistently requiring. These include: (1) the requirement to indicate the take points on the plat submitted with the drilling permit application for a horizontal drainhole well; (2) the additional notice when an operator requests an NPZ to replace a request for an exception to Rule 37; (3) clarification that the Commission considers a request for an NPZ to be an exception to Rule 37 requiring payment of an exception fee; and (4) the proposed prohibition on issuance of a drilling permit for an application if the horizontal displacement of the proposed drainhole exceeds the horizontal displacement of the proposed completion interval plus, 2,100 feet for fields that are regulated under the Commission's statewide rules; or the maximum diagonal allowed for fields for which special field rules specify a maximum diagonal.

With respect to the proposed requirement to indicate the take points on a plat submitted with the drilling permit application, the Commission estimates the cost of compliance for an individual drilling permit application to be no more than $25.

With respect to the proposed requirement to provide additional notice when an operator requests an NPZ to replace a request for an exception to Rule 37, the Commission estimates the cost to be no more than $100 per application.

With respect to the clarification that the Commission considers a request for an NPZ to be an exception to Rule 37 requiring payment of an exception fee, the cost would be $200 for each exception requested.

In calendar year 2009, 1,423 operators filed applications for drilling permits with the Commission. The average number of NPZs per filing is typically one or two per application. In general, an operator will file applications at least two times for the same horizontal drainhole well. In the initial application, the operator will designate NPZs. The operator then amends the initial application to request removal of the NPZs by requesting a Rule 37 exception or showing that the affected tracts have been leased. In many cases, operators have requested up to five amendments to one drilling permit application requesting the addition or removal of NPZs as tracts were leased or the operator applied for a Rule 37 exception.

The Commission anticipates that there will be no cost associated with the proposed prohibition on issuance of a drilling permit for an application in which the horizontal drainhole well if the horizontal displacement of the proposed drainhole exceeds the horizontal displacement of the proposed completion interval plus 2,100 feet for fields regulated under statewide rules, or the maximum diagonal allowed for fields for which special field rules specify a maximum diagonal.

Much of the cost associated with the proposed amendments would be offset by the savings that many operators would realize by avoiding the necessity of field rule hearings. Commission staff estimates the costs of field rule hearings to range from $3,000 for a simple, uncontested field rules application in which the applicant hired only a consulting engineer or geologist, to $50,000 or more for a complicated, contested field rules application in which outside counsel and multiple geological and/or engineering witnesses were hired, and extensive discovery and post-hearing motions were involved.

The economic impact of the cost of compliance with the proposed amendments will be the same for small businesses and micro-businesses as for larger businesses. Every operator, whether it is a small business or micro-business or not, must provide the same information with a drilling permit application and an as-drilled plat for a horizontal drainhole well. Because

the cost of compliance is not dependent on the size of the company, but is based on the costs of compliance associated with each individual horizontal drainhole well, there will be no difference in the cost of compliance between operators that are larger companies and operators that are small businesses or micro-businesses.

The Commission also has determined that a regulatory flexibility analysis is not required because including any additional alternative regulatory methods that will achieve the purpose of the proposed amendments while minimizing the adverse impacts on small businesses and micro-businesses is not consistent with the economic welfare of the state, other operators, and mineral owners. There are no additional alternative regulatory methods that will achieve the purpose of the proposed amendments while minimizing the adverse impacts on small businesses and micro-businesses; exempting small businesses and micro-businesses from the requirements of the rules would not be consistent with the economic welfare of the state.

The Commission finds that the proposed amendments likely would not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code, §2002.022.

The Commission has determined that the proposed amendments are not major environmental rules as defined in Texas Government Code, §2001.0225(a).

Ms. Savage has determined that for each year of the first five years that the proposed rules will be in effect, the public benefit will be to protect correlative rights. Additionally, a public benefit will be achieved through the clarification of the requirements to apply for a permit to drill a horizontal drainhole well and submit a completion report for that well. Further, a public benefit will be achieved because clarification of the Commission's requirements will ease the burden on Commission staff that processes drilling permit applications and completion reports.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments should refer to O&G Docket No. 20-0268564, and will be accepted until 12:00 p.m. (noon) on March 22, 2011, which is 60 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons additional time to review and analyze the proposal and to draft and submit comments.

The Commission specifically requests that interested persons comment on two elements in the proposal:

(1) the proposed new language in §3.86(b) that defines a request for a non-perforated zone as an exception to §3.37 of this title, relating to Statewide Spacing Rule, for which an operator would be required to pay the associated exception fee; and

(2) the proposed new language in §3.86(g)(5) that would require operators to cement the production casing or production liner along the entire horizontal bore length in all horizontal drainholes with a non-perforated zone.

The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes the amendments pursuant to Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; and Texas Natural Resources Code, §81.0521, which gives the Commission authority to a fee for an application for exception to a Commission rule.

Texas Natural Resources Code, §§81.051, 81.052, and 81.0521 are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and 81.0521.

Cross-reference to statute: Texas Natural Resources Code, §§81.051, 81.052, and 81.0521.

Issued in Austin, Texas on December 14, 2010.

*§3.79. Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) Common reservoir--Any oil, gas, or geothermal resources field or part thereof which comprises and includes any area which is underlain [~~underlaid~~], or which from geological or other scientific data or experiments or from drilling operations or other evidence appears to be underlain [~~underlaid~~] by a common pool or accumulation of oil, gas, or geothermal resources.

(6) Correlative interval--The depth interval designated by field rules, by new field designation, or, where a correlative interval has not been designated by the Commission, by other evidence submitted by the operator showing the producing interval for a field.

(7) [~~(6)~~] Cubic foot of gas or standard cubic foot of gas--The volume of gas contained in one cubic foot of space at a standard pressure base and at a standard temperature base. The standard pressure base shall be 14.65 pounds per square inch absolute, and the standard temperature base shall be 60 degrees Fahrenheit. Whenever the conditions of pressure and temperature differ from the standard in this definition, conversion of the volume from these conditions to the standard conditions shall be made in accordance with the ideal gas laws, corrected for deviation.

(8) [~~(7)~~] District office--The commission-designated office for the geographic area in which the property or act subject to regulation is located or arises.

(9) [~~(8)~~] Dry gas--Any natural gas produced from a stratum that does not produce crude petroleum oil.

(10) [~~(9)~~] Exploratory well--Any well drilled for the purpose of securing geological or geophysical information to be used in the exploration or development of oil, gas, geothermal, or other mineral resources, except coal and uranium, and includes what is commonly referred to in the industry as "slim hole tests," "core hole tests," or "seismic holes." A well equipped with surface casing and drilled to a formation known to be productive in the vicinity of the well does not qualify as an exploratory well. A well permitted as an exploratory well may not be completed as a producing well or assigned an allowable unless the operator proves at a hearing that the designation of the well as

an exploratory well at the time of permitting was done in good faith and not as a subterfuge to bolster a later exception request. For regulations governing coal exploratory wells, see Chapter 12 of this title (relating to Coal Mining Regulations), and for regulations governing uranium exploratory wells, see Chapter 11, Subchapter C of this title (relating to Substantive Rules--Uranium Exploration and Surface Mining [~~Surface Mining and Reclamation Division, Substantive Rules--Uranium Mining~~]).

(11) Field--A subsurface area designated by the Commission in which all producing wells are governed by the same set of rules. The vertical limits of a field are generally defined by a correlative interval approved by the Commission. The lateral extent of a field is generally determined over time by development of wells with substantially similar geologic characteristics and at least potential natural pressure communication from well to well. A field is frequently, but not necessarily, equivalent to a geologic reservoir.

(12) [~~(10)~~] Gas lift--Gas lift by the use of gas not in solution with oil produced.

(13) [~~(11)~~] Gas well--Any well:

(A) which produces natural gas not associated or blended with crude petroleum oil at the time of production;

(B) which produces more than 100,000 cubic feet of natural gas to each barrel of crude petroleum oil from the same producing horizon; or

(C) which produces natural gas from a formation or producing horizon productive of gas only encountered in a wellbore through which crude petroleum oil also is produced through the inside of another string of casing or tubing. A well which produces hydrocarbon liquids, a part of which is formed by a condensation from a gas phase and a part of which is crude petroleum oil, shall be classified as a gas well unless there is produced one barrel or more of crude petroleum oil per 100,000 cubic feet of natural gas; and that the term "crude petroleum oil" shall not be construed to mean any liquid hydrocarbon mixture or portion thereof which is not in the liquid phase in the reservoir, removed from the reservoir in such liquid phase, and obtained at the surface as such.

(14) [~~(12)~~] Gatherer--Includes any pipeline, truck, motor vehicle, boat, barge, or person authorized to gather or accept oil, gas, or geothermal resources from lease production or lease storage.

(15) [~~(13)~~] Geothermal energy and associated resources--

(A) All products of geothermal processes, embracing indigenous steam, hot water and hot brines, and geopressured water;

(B) Steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(C) Heat or other associated energy found in geothermal formations;

(D) Any by-product derived from them.

(16) [~~(14)~~] Geothermal resource well--A well drilled within the established limits of a designated geothermal field.

(A) A geopressured geothermal well must be completed within a geopressured aquifer.

(B) A geopressured aquifer is a water-bearing zone with a pressure gradient in excess of 0.5 pounds per square inch per foot and a temperature gradient in excess of 1.6 degrees Fahrenheit per 100 feet of depth.

(17) Junk and trash--Any item discarded or abandoned on the site as a result of oil and gas operations on the site.

(18) [~~(15)~~] Marginal well--Any oil well which is incapable of producing its maximum capacity of oil except by pumping, gas lift, or other means of artificial lift, and which well so equipped is capable, under normal unrestricted operating conditions, of producing such daily quantities of oil as herein set out, as would be damaged, or result in a loss of production ultimately recoverable, or cause the premature abandonment of same, if its maximum daily production were artificially curtailed. The following described wells shall be deemed "marginal wells" in this state.

(A) Any oil well incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of artificial lift, within this state and having a maximum daily capacity for production of 10 barrels or less, averaged over the preceding 10 consecutive days of stabilized production, producing from a depth of 2,000 feet or less.

(B) Any oil well incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of artificial lift, within this state and having a maximum daily capacity for production of 20 barrels or less, averaged over the preceding 10 consecutive days of stabilized production, producing from a horizon deeper than 2,000 feet and less in depth than 4,000 feet.

(C) Any oil well incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of artificial lift, within this state and having a maximum daily capacity for production of 25 barrels or less, averaged over the preceding 10 consecutive days of stabilized production, producing from a horizon deeper than 4,000 feet and less in depth than 6,000 feet.

(D) Any oil well incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of artificial lift, within this state and having a maximum daily capacity for production of 30 barrels or less, averaged over the preceding 10 consecutive days of stabilized production, producing from a horizon deeper than 6,000 feet and less in depth than 8,000 feet.

(E) Any oil well incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of artificial lift, within this state and having a maximum daily capacity for production of 35 barrels or less, averaged over the preceding 10 consecutive days of stabilized production, producing from a horizon deeper than 8,000 feet. (Reference Order Number 20-59,200, effective May 1, 1969.)

(19) [~~(16)~~] Natural gas or gas--These terms shall have the same meaning, as used in the rules, regulations, or forms of the commission.

(20) [~~(17)~~] Natural gasoline--Gasoline manufactured from casinghead gas or from any natural gas.

(21) [~~(18)~~] Oil well--Any well which produces one barrel or more crude petroleum oil to each 100,000 cubic feet of natural gas.

(22) [~~(19)~~] Operator--A person, acting for himself or as an agent for others and designated to the commission as the one who has the primary responsibility for complying with its rules and regulations in any and all acts subject to the jurisdiction of the commission.

(23) [~~(20)~~] Person--Any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, and a fiduciary or representative of any kind.

(24) [~~(21)~~] Product--Includes refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petro-

leum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, casinghead gasoline, natural gas gasoline, gas oil, naphtha, distillate, gasoline, kerosene, benzene [~~benzine~~], wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of petroleum, and/or any and all liquid products or by-products derived from crude petroleum oil or gas, whether hereinabove enumerated or not.

(25) [~~(22)~~] Sour gas--Any natural gas containing more than 1 1/2 grains of hydrogen sulphide per 100 cubic feet or more than 30 grains of total sulphur per 100 cubic feet, or gas which in its natural state is found by the commission to be unfit for use in generating light or fuel for domestic purposes.

(26) [~~(23)~~] Sweet gas--All natural gas except sour gas [~~and casinghead gas~~].

(27) [~~(24)~~] Texas offshore--This term embraces the area in the Gulf of Mexico seaward of the coast line of Texas comprised of:

(A) the three league area confirmed to the State of Texas by the Submerged Land Act (43 United States Code §§1301-1315); and

(B) the area seaward of such three league area owned by the United States.

(28) [~~(25)~~] Transportation or to transport--The movement of any crude petroleum oil or products of crude petroleum oil or the products of either from any receptacle in which any such crude petroleum or products of crude petroleum oil or the products of either has been stored to any other receptacle by any means or method whatsoever, including the movement by any pipeline, railway, truck, motor vehicle, barge, boat, or railway tank car. It is the purpose of this definition to include the movement or transportation of crude petroleum oil and products of crude petroleum oil and the products of either by any means whatsoever from any receptacle containing the same to any other receptacle anywhere within or from the State of Texas, regardless of whether or not possession or control or ownership change.

(29) [~~(26)~~] Transporter or transporting agency--Includes any common carrier by pipeline, railway, truck, motor vehicle, boat, or barge, and/or any person transporting oil or a product by pipeline, railway, truck, motor vehicle, boat, or barge.

*§3.86. Horizontal Drainhole Wells.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Correlative interval--The depth interval designated by the field rules, by new field designation, or, where a correlative interval has not been designated by the commission, by other evidence submitted by the operator showing the producing interval for the field in which the horizontal drainhole is completed.

(2) Deviation box--A four-sided figure formed by two lines perpendicular to the permitted horizontal drainhole path and two lines parallel to the permitted horizontal wellbore path. One perpendicular line intersects the permitted first take point and the other intersects the permitted last take point of the well. The remaining two lines are on opposite sides of the permitted well path and parallel to that path at a distance equal to 10% of the minimum lease line spacing distance applicable to all points on the horizontal wellbore between the first and last take points.

(3) [~~(2)~~] Horizontal drainhole--That portion of the wellbore drilled in the correlative interval, between the penetration point and the terminus.

(4) [~~(3)~~] Horizontal drainhole displacement--The calculated horizontal displacement of the horizontal drainhole from the penetration point to the terminus minus any portion of the horizontal drainhole, such as the non-perforated zone, that is not within the completion interval.

(5) [~~(4)~~] Horizontal drainhole well--Any well that is developed with one or more horizontal drainholes having a horizontal drainhole displacement of at least 100 feet.

(6) Horizontal wellbore completion interval--The portion of a horizontal drainhole that contains take points. In determining the horizontal displacement of the completion interval, the horizontal displacement of any interval designated as a non-perforated zone shall not be included.

(7) Non-perforated zone or NPZ--The interval of a horizontal drainhole that an operator has represented, as part of the permitting process, will not have any perforations or other take points.

(8) [~~(5)~~] Penetration point--The point at which a [~~where the~~] drainhole penetrates the top of the correlative interval of a field.

(9) Production sharing agreement or PSA--A private, contractual agreement between the operator of a proposed well and non-operating mineral interest owners in two or more leases or pooled units that will be penetrated by a horizontal drainhole that provides for the sharing of production proceeds, but not for the pooling of the component leases or pooled units.

(10) PSA code sheet--A document on which data is provided by an operator electronically or by hard copy in support of an application for a well on a tract covered by a production sharing agreement. The data must include the name of the PSA unit and total acreage in each lease and pooled unit participating in the PSA; a list of all completed and permitted wells within each participating lease or unit; a list of all other PSA wells using any acreage from the lease/units contributing to the applied-for PSA well; a list of the acreage assigned to each completed or permitted well using acreage from each of the component lease/units.

(11) Record well--A mock well created in Commission records for a stacked lateral well for the purpose of recording combined well tests and production of stacked lateral drainholes that comprise the stacked lateral well.

(12) Rule 37 distance--The minimum prescribed spacing distance applicable to a wellbore under the provisions of §3.37 of this title (relating to Statewide Spacing Rule) and under any special field rules for the field in which the well is permitted or sought to be permitted.

(13) Stacked lateral wells--Horizontal drainholes within the same field drilled from different surface locations that meet the criteria set out in subsection (e)(2)(A) of this section and that are considered a single well for regulatory purposes.

(14) Take point--Any point on a horizontal drainhole that is open to the formation so that hydrocarbons from the formation can enter the wellbore. Take points include but are not limited to perforations in the casing of a horizontal drainhole, an external casing packer in a cased well, and any open-hole section of the horizontal drainhole in an uncased well.

(15) [~~(6)~~] Terminus--The farthest point drilled on a [~~required to be surveyed along the~~] horizontal drainhole from the penetration point contained within the boundaries of the lease, pooled unit, production sharing agreement tract, or unitized tract on which the well was permitted [~~and within the correlative interval~~].

(b) Drainhole spacing.

(1) No point on a horizontal drainhole shall be drilled nearer than 1,200 feet (horizontal displacement), or other between-well spacing requirement under applicable rules for the field, to any point along any other horizontal drainhole in another well, or to any other well completed or drilled [~~drilling~~] in the same field on the same lease, pooled unit, PSA tract, or unitized tract.

(2) No point on a horizontal drainhole shall be drilled nearer than 467 feet, or other lease-line spacing requirement under applicable rules for the field, from any property line, lease line, or subdivision line. If an operator uses reasonable diligence to drill a horizontal drainhole in compliance with the operator's drilling permit, any point on the horizontal wellbore closer to a lease line than authorized by the permit but within the deviation box shall not be considered to be in violation of §3.37 of this title and an amended permit shall not be required. If any such point on the horizontal drainhole is not within the deviation box, then the operator must obtain an exception to §3.37 of this title before the Commission will allow any production. An operator may obtain administrative approval of an exception to §3.37 of this title for a well with take points on the horizontal drainhole less than a Rule 37 distance from a lease line, property line, or subdivision line if the operator declares an NPZ such that no take points on the horizontal drainhole are within a Rule 37 distance of such line. A separate exception to §3.37 of this title and the associated fee is required for each declared NPZ. If, subsequent to obtaining a permit for a horizontal well, the operator intends to perforate within a portion of the drainhole originally restricted with an NPZ, then the operator must amend the permit to demonstrate that the NPZ is no longer needed for the well to comply with §3.37 of this title as a regular location, or obtain from the Commission an exception to §3.37 of this title under the procedures set forth in that section.

(3) Procedure for designation and removal of NPZs.

(A) If an operator designates an NPZ prior to the issuance of a notice of application for a proposed horizontal drainhole well, the Commission may grant an exception to §3.37 of this title administratively, without notice, as to any tract within a Rule 37 distance of one or more points on the horizontal wellbore but not within a Rule 37 distance of any take point.

(B) If an operator files a new plat or otherwise designates an NPZ after notice of application has been mailed but prior to final Commission action on the application, the operator must request administrative approval of an exception to §3.37 of this title for each designated NPZ and provide notice of the request and of the change in the application, including a copy of the changed plat, by certified mail with proof of delivery, to each entity who was entitled to notice of the application immediately prior to the NPZ designation. The Commission may not grant the application until proof of such notice has been on file with the Commission for at least 10 days.

(C) If an operator seeks to remove all or part of a designated NPZ after the Commission has granted a permit with NPZs for a horizontal drainhole well, the operator must file an application for an amended permit and, if required, an application and the associated fee for an exception to §3.37 of this title and give notice of this application for an amended permit to the entities specified in §3.37(a)(2)(A) of this title for each tract in which any portion of the horizontal drainhole not within a designated NPZ is less than a Rule 37 distance.

(D) If an operator designates one or more NPZs for a horizontal drainhole well, then the operator must notify the appropriate district office at least 24 hours prior to each perforation activity.

(E) If an operator designates one or more NPZs for a horizontal drainhole well, then the operator must file with the completion reports for the well a certified as-drilled plat that includes:

*(i)* the as-drilled track of the horizontal drainhole;

*(ii)* the location of each take point on the horizontal drainhole;

*(iii)* the boundaries of any wholly or partially unleased tracts within a Rule 37 distance of the horizontal drainhole; and

*(iv)* notations of the shortest distance from each wholly or partially unleased tract within a Rule 37 distance of the horizontal drainhole to the nearest take point on the horizontal drainhole.

(4) The Commission may issue a permit for a horizontal drainhole well based on a PSA subject to the following requirements:

(A) The lease name as designated on Commission records must end with the notation "(SA)." In addition, the applicant must state in the remarks section of Form W-1 that the application involves a PSA.

(B) The operator must file the following supporting documentation with the application:

*(i)* a signed statement and true and correct copies of any and all documents that reflect that the applicant has all necessary property and contractual rights to drill a well at the proposed location, including, if applicable, the right to use the applied-for off-lease surface location and/or to penetrate the target field off-lease, and that the applicant has the legal right to develop and produce the minerals under all acreage assigned to the well;

*(ii)* a signed statement specifying the percent of participation in the PSA for working and royalty interest owners within each lease or pooled unit contributing acreage to the PSA. The Commission shall not issue administrative approval of the drilling permit application if participation for either working or royalty interest owners is less than 65% for any lease or pooled unit contributing to the PSA;

*(iii)* the Sharing Agreement Form PSA-12 detailing the amount of acreage to be assigned from each lease and/or pooled unit contributing to the PSA;

*(iv)* a plat indicating acreage being assigned from each participating lease/unit, wellbore path, penetration point, terminus, and the proposed perforations and any other points at which the wellbore will be open within the designated interval of the permitted field. The plat also must indicate the distance from the applied-for well to each other well that is completed in the same field and located on a lease/unit affected by the PSA;

*(v)* a PSA code sheet; and

*(vi)* in the remarks section of Form W-1, a notation to identify the well as a PSA well and a statement indicating the total number of existing and applied-for wells in the applied-for field on the leases/units affected by the PSA.

(5) [~~(3)~~] All wells developed with horizontal drainholes shall otherwise comply with Statewide Rule 37, §3.37 of this title [~~(relating to Statewide Spacing Rule)~~], or other applicable spacing rules.

(c) Well densities. All wells developed with horizontal drainholes shall comply with Statewide Rule 38, §3.38 of this title (relating to Well Densities) or other applicable density rules.

(d) Proration [~~and drilling~~] units.

(1) Acreage may be assigned to each horizontal drainhole well for the purpose of allocating allowable oil or gas production up to the amount specified by applicable rules for a proration unit for a

vertical well plus the additional acreage assignment as provided in this paragraph.
Figure: 16 TAC §3.86(d)(1)

(2) Assignment of acreage to proration [~~and drilling~~] units for horizontal drainhole wells must be applied [~~done~~] in accordance with Statewide Rule 40, §3.40 of this title (relating to Assignment of Acreage to Pooled Development and Proration Units).

(3) All proration [~~and drilling~~] units shall consist of continuous and contiguous acreage [~~and proration units shall consist of acreage~~] that can be reasonably considered to be productive of oil or gas.

(4) All points on the horizontal drainhole must be within the proration [~~and drilling~~] unit, unless otherwise specified in the special field rules.

(5) The maximum daily allowable for a horizontal drainhole well shall be determined by multiplying the applicable allowable for a vertical well in the field with a proration unit containing the maximum acreage authorized by the applicable rules for the field, exclusive of tolerance acreage as defined by §3.38 of this title or special field rules, by a fraction:

(A) the numerator of which is the acreage assigned to the horizontal drainhole well for proration purposes; and

(B) the denominator of which is the maximum acreage authorized by the applicable field rules for proration purposes, exclusive of tolerance acreage. The daily oil allowable shall be adjusted in accordance with Statewide Rule 49(a), §3.49(a) of this title (relating to Gas-Oil Ratio), when applicable.

(C) For the purpose of assigning additional acreage to a horizontal well, the operator must use the horizontal displacement of the completion interval, minus the horizontal displacement of any NPZ in such determination.

(6) The maximum diagonal for each proration unit containing a horizontal drainhole well shall be the horizontal [~~drainhole~~] displacement of the completion interval in the longest horizontal drainhole for the well plus:

(A) 2,100 feet for fields that are regulated under statewide rules; or

(B) the maximum diagonal allowed for fields where the special field rules specify a maximum diagonal.

(e) Multiple drainholes allowed.

(1) Multiple drainholes from a single well.

(A) A single well may be developed with more than one horizontal drainhole originating from a single vertical wellbore.

(B) [~~(2)~~] A horizontal drainhole well developed with more than one horizontal drainhole from the same surface location shall be treated as a single well.

(C) [~~(3)~~] The horizontal [~~drainhole~~] displacement of the completion interval used for calculating additional acreage assignment for a well completed with multiple horizontal drainholes shall be the horizontal [~~drainhole~~] displacement of the completion interval in the longest horizontal drainhole plus the projection of the horizontal displacement of the completion interval in one [~~any~~] other horizontal drainhole on a line that extends in a 180 degree direction from the longest horizontal drainhole. The horizontal displacement of any NPZs must be excluded from this calculation.

(2) Stacked lateral wells. For oil and gas wells, the commission may consider stacked lateral wells within the correlative interval for the field that are drilled from different wellbores a single well for regulatory purposes.

(A) A horizontal drainhole well qualifies as a stacked lateral well under the following conditions:

*(i)* there are two or more horizontal drainhole wells on the same lease or pooled unit within the correlative interval for the field;

*(ii)* horizontal drainholes are drilled from at least two different surface locations on the same lease or pooled unit;

*(iii)* there are no more than 250 feet between the surface locations of horizontal drainholes qualifying as a stacked lateral well;

*(iv)* each take point of a stacked lateral well's horizontal drainhole is no more than 300 feet in a horizontal direction from any point along the completion interval of the first permitted or completed well that established the stacked lateral well, measured perpendicular to the orientation of the horizontal drainhole and illustrated by the projection of each horizontal drainhole in the stacked lateral well into a common horizontal plane as seen on a location plat; and

*(v)* there is no maximum or minimum distance limitations between the horizontal drainholes of a stacked lateral well in a vertical direction.

(B) The Commission will consider a stacked lateral well, including all surface locations and horizontal drainholes comprising such stacked lateral well, as a single well for density and allowable purposes.

(C) The Commission will permit separately and assign a separate API number to each surface location of a stacked lateral well. In a drilling permit application for a stacked lateral well, the applicant must identify in the well's lease name each surface location of a stacked lateral well with the designation "SL" and must describe the well as a stacked lateral well in the "Remarks" portion of the drilling permit application. The operator also must identify on the plat any other existing, or applied for, horizontal drainholes comprising the stacked lateral well being permitted.

(D) In order to qualify as a regular location in accordance with §3.37 of this title, each horizontal drainhole of a stacked lateral well shall comply with:

*(i)* the field's minimum spacing distance as to any lease, pooled unit or property line; and

*(ii)* the field's minimum between well spacing distance as to any different well, including all horizontal drainholes of any other stacked lateral well, on the same lease or pooled unit in the field.

(E) An operator may seek exceptions to §3.37 and §3.38 of this title for stacked lateral wells in accordance with the Commission's statewide rules, or any applicable field rule for the field in which the stacked lateral wells are to be completed.

(F) An operator must file a separate completion report for each surface location of a stacked lateral well. An operator also must file a certified as-drilled location plat for each surface location of a stacked lateral well showing each horizontal drainhole from that surface location, confirming the well's qualification as a stacked lateral well, and showing the maximum distances in a horizontal direction between each horizontal drainhole of the stacked lateral well.

(G) In addition to the information on the completion report for each surface location of a stacked lateral well required by subparagraph (F) of this paragraph, the operator must file a separate Form G-1 or Form W-2 for the purpose of providing a mechanism to build a record well for the stacked lateral well. The Commission will identify the record well with the words "SL Record" included in the lease name and assign an API number and gas well ID or oil lease number, and list the well on the proration schedule with an allowable, if applicable.

(H) In addition to the record well, the Commission will list each surface location of a stacked lateral well on the proration schedule, but will not assign an allowable for an individual surface location. For each surface location of a stacked lateral well, an operator must perform a separate potential test in accordance with §3.28 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported), or §3.52 of this title (relating to Oil Well Allowable Production), and must report on Form G-10 or Form W-10. The operator must report the sum of all horizontal drainhole test rates as the test rate for the record well.

(I) An operator must attribute all production from horizontal drainholes included as a stacked lateral well to the record well when reporting production on Form PR, Monthly Production Report. Production reported for a record well is the total production from the horizontal drainholes comprising the stacked lateral well. An operator must measure the production from each surface location of a stacked lateral well. The operator may measure full well stream with the measurement adjusted for the allocation of condensate based on the gas to liquid ratio established by the most recent potential test rate reported in Form G-10 for that surface location. The operator must identify gas and condensate production using the individual API number and must record and report the production on the supplementary attachment to Form PR.

(J) If the Commission removes the field's 100% AOF status, the Commission shall assign a single gas allowable to each record well. An operator may produce the assigned allowable from any one or all of the horizontal drainholes comprising the stacked lateral well.

(K) An operator must file an individual Form W-3A, Notice of Intention to Plug and Abandon, and Form W-3, Well Plugging Report, as required by Commission rules, for each horizontal drainhole comprising the stacked lateral well.

(L) An operator may not file Form P-4, Producer's Transportation Authority ad Certificate of Compliance, to transfer an individual surface location of a stacked lateral well to another operator. The Commission will accept a Form P-4 filed to change the operator of a record well if accompanied by a separate Form P-4 for each surface location of the stacked lateral well.

(f) Drilling permit applications and required plats [~~reports~~].

(1) Application. Any intent to develop a new or existing well with horizontal drainholes must be indicated on the application to drill. An application for a permit to drill a horizontal drainhole must be accompanied by [~~shall include~~] the fees required by Statewide Rule 78, §3.78 of this title (relating to Fees and Financial Security Requirements), and must [~~shall~~] be certified by a person acquainted with the facts, stating that all information in the application is true and complete to the best of that person's knowledge.

(2) Plat [~~Drilling unit plat~~]. The application for a permit to drill a horizontal drainhole must [~~shall~~] be accompanied by a plat showing the entire lease, pooled unit, PSA tract, or unitized tract.

(A) In addition to the plat requirements provided for in §3.5 of this title (relating to Application to Drill, Deepen, Reenter, or Plug Back) (Statewide Rule 5), the plat must [~~shall~~] include the following:

*(i)* If the well is the first well on the lease, pooled unit, or unitized tract, a plat of the entire lease, pooled unit, PSA tract, or unitized tract showing the acreage assigned to the drilling unit for the proposed well and the acreage assigned to the drilling units for all current applied for, permitted, or completed oil, gas, or oil and gas wells on the lease, pooled unit, or unitized tract.[~~;~~]

*(ii)* If the well is not the first well on the lease, pooled unit, PSA tract, or unitized tract and the lease boundaries have not changed, a plat showing the two nearest non-parallel survey and lease lines on a standard scale plat.

*(iii)* If the well is part of a pooled unit, PSA tract, or unitized tract, a plat that shows the entire pooled unit, PSA tract, or unitized tract.

*(iv)* [~~(ii)~~] The [~~the~~] surface location of the proposed horizontal drainhole well, and the proposed path, penetration points, take points (if applicable), and terminus locations of all drainholes.[~~;~~]

*(v)* [~~(iii)~~] Two [~~two~~] perpendicular lines from the nearest point on the lease line, pooled unit line, or any unleased interest in a tract of the pooled unit, depicting the distance(s) to:

*(I)* the penetration point(s); [~~and~~]

*(II)* the terminus location(s);

*(III)* the first take point; and

*(IV)* the last take point.

*(vi)* [~~(iv)~~] Perpendicular [~~perpendicular~~] lines providing the distance in feet from the two nearest non-parallel survey lines to the terminus location(s).[~~;~~]

*(vii)* [~~(v)~~] A line indicating [~~a line providing~~] the distance in feet from the closest point along the horizontal course(s) of the drainhole(s) to the nearest point on the lease line, pooled unit line, or unitized tract line. If there is an unleased interest in a tract of the pooled unit that is nearer than the pooled unit line, the nearest point on that unleased tract boundary shall be used. If the well is to be drilled in a field with no special rules governing horizontal well spacing, the line should be drawn from the portion of the drainhole that encompasses the penetration point and the terminus location. If the well is to be drilled in a field with special field rules governing horizontal well spacing, the line may be drawn from the portion of the drainhole that encompasses the first take point to the last take point.[~~; and~~]

*(viii)* [~~(vi)~~] Lines [~~lines~~] from the nearest oil, gas, or oil and gas well, applied for, permitted or completed in the same lease or pooled unit and in the same field and reservoir depicting the distance to:

*(I)* the penetration point(s);

*(II)* the closest point along the horizontal course(s) of the drainhole(s); and

*(III)* the terminus location(s); and[~~.~~]

*(ix)* If special horizontal rules exist for the field in which the well was drilled, the distance to:

*(I)* the first take point;

*(II)* the closest point along the horizontal course(s) of the drainhole(s); and

*(III)* the last take point.

(B) The Commission may not issue a permit for a horizontal drainhole well if the horizontal displacement of the proposed drainhole exceeds the horizontal displacement of the proposed completion interval plus:

*(i)* 2,100 feet for fields that are regulated under the Commission's statewide rules; or

*(ii)* the maximum diagonal allowed for fields for which special field rules specify a maximum diagonal.

(g) Completion reports.

(1) The operator of a horizontal drainhole well must file an as-drilled plat showing the path, penetration point, terminus and the first and last take points of all drainholes in horizontal wells, regardless of allocation formula. A person with knowledge of the facts pertinent to the completion report must certify that the as-drilled plat is accurately drawn to scale and correctly reflects all pertinent and required data.

(2) [~~(B)~~] An amended drilling permit application and plat shall be filed after completion of the horizontal drainhole well if the commission determines that the drainhole as drilled is not reasonable with respect to the drainhole represented on the plat filed with the drilling permit application. If, upon completion of the well, the operator intends to perforate within a portion of the drainhole originally permitted as an NPZ, then the operator must amend the drilling permit to show that the NPZ is no longer needed or obtain from the Commission an exception to §3.37 of this title.

(3) Directional survey. A directional survey from the surface to the farthest point drilled on the horizontal drainhole shall be required for all horizontal drainholes. The directional survey and accompanying reports shall be conducted and filed in accordance with Statewide Rules 11 and 12, §3.11 and §3.12 of this title (relating to Inclination and Directional Surveys Required and Directional Survey Company Report). No allowable shall be assigned to any horizontal drainhole well until a directional survey and survey plat has been filed with and approved [~~accepted~~] by the commission. To mitigate the potential for wellbore interference, the operator of a horizontal drainhole well must promptly provide copies of any directional surveys to the parties entitled to notice under subsection (i) of this section, upon request.

(4) Perforation log. An operator shall submit with the completion report a log, including the entire log header, that identifies the locations of the perforations and all other take points for all horizontal drainholes with NPZs. The perforation log must be created and maintained by a third party. The log is a public record and the operator may not designate the log as confidential.

(5) Production casing or production liner. The operator must cement the production casing or production liner along the entire horizontal bore length in all horizontal drainholes with a non-perforated zone. The cement may not have any volume extenders and must comply with the requirements of §3.13(b)(2)(C)(i) of this title (relating to Casing, Cementing, Drilling, and Completion Requirements). The Commission shall not allow open hole completions or external casing packers.

(6) PSA information required with completion report. An operator must submit the following forms and information with the completion report:

(A) the lease name must include the initials "SA";

(B) PSA information must be referenced in the completion report remarks;

(C) Sharing Agreement Report (Form PSA-12);

(D) Form P-15, PSA-12 Code Sheet defining specific percentage of acreage amount shared for the completed well;

(E) Form P-15 defining specific percentage of acreage amount shared for any other well(s) where acreage has been amended or revised due to shared acreage;

(F) a complete PSA-12 Code Sheet for all wells on any leases that may be affected by the Sharing Agreement and each PSA-12 Code Sheet must include remarks for the Shared Acreage Agreement;

(G) Each PSA-12 Code Sheet must contain accurate total acreage figures for the shared leases. Acreage totals must match information listed on the Form PSA-12, Production Sharing Agreement; and

(H) a certified plat that indicates lease outlines for all leases included in the PSA.

(7) [~~(4)~~] Proration unit plat. The required proration unit plat must depict the lease, pooled unit, or unitized tract, showing the acreage assigned to the proration unit for the horizontal drainhole well, the acreage assigned to the proration units for all wells on the lease, pooled unit, or unitized tact, and the path, penetration point, and terminus of all drainholes. No allowable shall be assigned to any horizontal drainhole well until the proration unit plat has been filed with and approved [~~accepted~~] by the commission.

(h) [~~(g)~~] Exceptions [~~and procedure for obtaining exceptions~~].

[~~(1)~~] The commission may grant exceptions to this section in order to prevent waste, prevent confiscation, or to protect correlative rights.

(1) [~~(2)~~] Procedure for obtaining exceptions. If a permit to drill a horizontal drainhole requires an exception to this section, the notice and opportunity for hearing procedures for obtaining exceptions to the density provisions prescribed in Statewide Rule 38, §3.38 of this title (relating to Well Densities), shall be followed as set forth in Statewide Rule 38(h), §3.38(h) of this title [~~(relating to Well Densities)~~].

(2) [~~(3)~~] Notice for exceptions. For notice purposes, the commission presumes that for each adjacent tract and each tract nearer to any point along the proposed or existing horizontal drainhole than the prescribed minimum lease-line spacing distance, affected persons include:

(A) the designated operator;

(B) all lessees of record for tracts that have no designated operator; and

(C) all owners of record of unleased mineral interests.

(i) Notice to mineral owners of offsite tracts.

(1) Notwithstanding subsection (h)(2) of this section, an applicant for a drilling permit for a horizontal well for any penetration point not located on the same lease, pooled unit, unitized tract or production sharing agreement tract on which the well is permitted (an offsite tract) must give 21 days notice by certified mail, return receipt requested to the mineral owners of the offsite tract. For the purposes of this rule, the mineral owners of the offsite tract are:

(A) the designated operator;

(B) all lessees of record for the offsite tract where there is no designated operator; and

(C) all owners of unleased mineral interests where there is no designated operator or lessee.

(2) In providing such notice, an applicant must provide the mineral owners of the offsite tract with a plat clearly depicting the projected path of the entire wellbore. In the event the applicant is unable, after due diligence, to locate the whereabouts of any person to whom notice is required by this rule, the applicant must publish notice of this application pursuant to §1.46 of this title (relating to Notice by Publication in Oil and Gas and Surface Mining and Reclamation Nonrulemaking Proceedings).

(3) The Commission may dismiss or cancel any drilling permit applications filed prior to the time limits as set forth in §1.46 of this title, and may retain all fees.

(4) If the mineral owners of the offsite tract object to the location of the penetration point, the applicant may request a hearing to demonstrate the necessity of the location of the penetration point of the well to prevent waste or to protect correlative rights.

(5) An applicant is not required to give notice of offsite tract penetration if:

(A) the applicant receives written waivers of objection from all mineral owners of the offsite tract; or

(B) the applicant is the only mineral owner of the offsite tract.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2011.

TRD-201100014
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: February 20, 2011
For further information, please call: (512) 475-1295

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# PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes amendments to §25.109, relating to Registration of Power Generation Companies and Self-Generators, §25.173, relating to the Goal for Renewable Energy, and §25.211, relating to Interconnection of On-site Distributed Generation. The purpose of the amendments to §25.173 is to provide incentives for non-wind renewable energy to permit the state to meet the 500 megawatt (MW) non-wind renewable energy target in Public Utility Regulatory Act (PURA) §39.904. The purpose of the amendments to §25.109 and §25.211 is to facilitate registration of distributed renewable generation (DRG) owners as power generation companies (PGCs) or self-generators (SGs).

The rules are competition rules subject to judicial review as specified in PURA §39.001(e). Project Number 35792 is assigned to this proceeding.

David Smithson, Retail Market Analyst, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the amendments. The amendments will have an impact on state and local government as consumers of electricity. The impacts will depend on the level of electricity consumption for each government entity and will be the same as for similarly-sized non-government consumers.

Mr. Smithson has determined that for each year of the first five years the amendments are in effect the primary anticipated public benefits of the amendments will be the promotion of investment in new, non-wind renewable energy resources that will help meet the legislative target of installing an additional 500 megawatts (MW) of non-wind renewable energy generation by 2015. Mr. Smithson has determined that for each year of the first five years the amendments are in effect, the probable economic cost to persons required to comply with the amendments will be the cost to retail entities subject to the renewable portfolio standard of purchasing renewable energy credits or making alternative compliance payments, which may be passed on to those entities' customers. Mr. Smithson has concluded that the economic cost is necessary to meet the legislative target of installing an additional 500 MW of non-wind renewable energy generation by 2015.

Mr. Smithson has determined that for each year of the first five years the amendments are in effect, the probable economic cost of the amendments on local economies in Texas in areas subject to PURA §39.904 will be an increase in the cost of electricity for all electric customers, other than those large customers who have opted out of the renewable energy credit (REC) program. Based on an average 1.3 MWH consumption per month, the expected average increase in monthly costs over the first six years for residential customers will be about $0.21, on a worst-case basis. The expected average monthly increase for small businesses and other small non-residential customers (using 7.6 MWH/month) and large non-residential customers (using 1417.2 MWH/month) will be about $1.21 and $227.43, respectively, on a worst-case basis. These costs have been estimated based on the level of the alternative compliance payments (ACPs). If the program is successful, producers of renewable energy will sell renewable energy credits at a cost below the level of the ACPs, and the cost of the amendments will be lower. The commission staff is filing a more detailed calculation of the cost of the program, so that commenters have a better understanding of the estimated cost of the amendments. The effect of the amendments on employment in each geographic area affected by the amendments is difficult to quantify. The amendments will increase employment in the affected areas as a result of construction and operation and maintenance of new non-wind renewable energy generation facilities, but may dampen employment more generally in those areas as a result of the increase in the cost of electricity for all electric customers in those areas.

Mr. Smithson has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the amendments, because they may pass the costs of purchasing renewable energy credits or making alternative compliance payments to their customers, like all other businesses required to comply with the amendments. Due to the competitive structure of the ERCOT retail market, it is difficult to know how much, if any, of the costs will actually be passed through. Therefore, no regulatory flexibility analysis is required.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure

Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 at 9:00 a.m. on Tuesday, February 22, 2011. The request for a public hearing must be received within 20 days after publication of the amendments.

Initial comments on the amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by February 22, 2011 (32 days after publication) of the amendments. Reply comments may be submitted by March 7, 2011 (45 days after publication). Sixteen copies of initial comments and reply comments are required to be filed pursuant to §22.71(c) of this title. Comments shall be organized in a manner consistent with the organization of the amended rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by implementation of the amendments. The commission will consider the costs and benefits in deciding whether to adopt the amendments. All comments should refer to Project Number 35792.

Additionally, the commission invites comments on the following questions:

1. Should the 25% cap on use of fossil fuels for co-fired facilities be changed?

2. Should the restrictions on earning renewable energy credits for facilities repowered after September 1, 1999 be changed?

3. After what date should non-wind renewable generation be deemed "new"?

4. How should the 500 MW target be allocated between solar and other non-wind renewable generation technologies?

5. Should definitions be provided for any terms used within the definitions?

6. What is the appropriate termination date, which currently is proposed as 2030, for the obligation to retire non-wind renewable energy credits (RECs)?

7. How should the 500 MW non-wind target be split between Tier 1 and Tier 2 RECs?

8. Should retail electric providers servicing state and local governmental entities, including educational facilities, be exempted from the obligation to acquire RECs?

9. Are the proposed dates to implement the non-wind target reasonable or should they be moved up or back?

10. Are the amounts of the alternative compliance payments for Tier 1 RECs and Tier 2 RECs sufficient? If not, what is the correct amount?

## SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

### 16 TAC §25.109

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §39.101(b)(3), which entitles a customer to have access to on-site distributed generation and to providers of energy generated by renewable energy resources; §39.101(e), which gives the commission the authority to adopt and enforce rules as may be necessary or appropriate to carry out §39.101(a) - (d), including rules for minimum service standards for a retail electric provider relating to interconnection and use of on-site generation; §39.351, which provides that a person may not generate electricity unless the person is registered with the commission as a power generation company in accordance with this section; §39.904, which establishes goals and targets for renewable energy, including a target of having at least 500 megawatts of capacity from a technology other than wind energy, directs the commission to establish a renewable energy credit trading program, and authorizes the commission to adopt rules to administer the renewable energy program established in this section; §39.914, which addresses surplus solar generation produced by school buildings; and §39.916, which addresses interconnection of distributed renewable generation.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.101, 39.351, 39.904, 39.914, and 39.916.

*§25.109. Registration of Power Generation Companies and Self-Generators.*

(a) Application.

(1) - (2) (No change.)

(3) [~~A person that owned such generating facility prior to September 1, 2000 shall register after September 1, 2000 and before January 1, 2001.~~] A person that becomes subject to this section [~~after September 1, 2000~~] must register on or before the first date of generating electricity.

(4) The owner of distributed renewable generation interconnected to an electric utility's distribution system in accordance with §25.211 of this title (relating to Interconnection of On-Site Distributed Generation) shall be deemed to have registered by providing the information to the utility that is required under §25.211 of this title and complying with any streamlined registration process established by the commission.

(b) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 6, 2011.

TRD-201100031
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: February 20, 2011
For further information, please call: (512) 936-7223

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## SUBCHAPTER H. ELECTRICAL PLANNING DIVISION 1. RENEWABLE ENERGY RESOURCES AND USE OF NATURAL GAS

### 16 TAC §25.173

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §39.101(b)(3), which entitles a customer to have access to

on-site distributed generation and to providers of energy generated by renewable energy resources; §39.101(e), which gives the commission the authority to adopt and enforce rules as may be necessary or appropriate to carry out §39.101(a) - (d), including rules for minimum service standards for a retail electric provider relating to interconnection and use of on-site generation; §39.351, which provides that a person may not generate electricity unless the person is registered with the commission as a power generation company in accordance with this section; §39.904, which establishes goals and targets for renewable energy, including a target of having at least 500 megawatts of capacity from a technology other than wind energy, directs the commission to establish a renewable energy credit trading program, and authorizes the commission to adopt rules to administer the renewable energy program established in this section; §39.914, which addresses surplus solar generation produced by school buildings; and §39.916, which addresses interconnection of distributed renewable generation.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.101, 39.351, 39.904, 39.914, and 39.916.

*§25.173. Goal for Renewable Energy.*

(a) Purpose. The purposes of this section are:

(1) to ensure that the cumulative installed generating capacity from renewable energy technologies in this state totals [~~2,280 megawatts (MW) by January 1, 2007, 3,272 MW by January 1, 2009,~~] 4,264 MW by January 1, 2011, 5,256 MW by January 1, 2013, and 5,880 MW by January 1, 2015, with a target of at least 500 MW of the total installed renewable capacity after September 1, 2005, coming from a renewable energy technology other than a source using wind energy, and that the means exist for the state to achieve a target of 10,000 MW of installed renewable capacity by January 1, 2025;

(2) - (3) (No change.)

(4) to protect and enhance the quality of the environment in Texas through increased use of renewable energy resources; and

(5) (No change.)

(b) Application. This section applies to power generation companies as defined in §25.5 of this title (relating to Definitions), distributed renewable generation owners (DRGOs) and independent school district solar generation owners (ISD-SG Owners) as defined in §25.217 of this title (relating to Distributed Renewable Generation), and retail entities as defined in subsection (c) of this section.

(c) Definitions.

(1) Compliance period--A calendar year beginning January 1 and ending December 31 of each year in which renewable energy credits are required of a retail entity.

[~~(2) Compliance premium--A premium awarded by the program administrator in conjunction with a renewable energy credit that is generated by a renewable energy source that is not powered by wind and meets the criteria of subsection (m) of this section. For the purpose of the renewable energy portfolio standard requirements, one compliance premium is equal to one renewable energy credit.~~]

(2) [~~(3)~~] Designated representative--A responsible natural person authorized by the owners or operators of a renewable energy resource to register that resource with the program administrator. The designated representative must have the authority to represent and legally bind the owners and operators of the renewable energy resource in all matters pertaining to the renewable energy credits trading program.

[~~(4) Existing facilities--Renewable energy generators placed in service before September 1, 1999.~~]

(3) [~~(5)~~] Generation offset technology--Any renewable technology that reduces the demand for electricity at a site where a customer consumes electricity. An example of this technology is solar water heating.

(4) [~~(6)~~] Microgenerator--A customer who owns one or more eligible renewable energy resources [~~generating units~~] with a rated capacity of less than or equal to two [~~1~~] MW operating on the customer's side of the utility meter.

(5) New biomass resource--An energy resource interconnected after January 1, 2014, that derives electrical power from landfill gas, materials resulting from storm damage, urban waste, logging debris, mill waste, waste from thinning conducted for forest health reasons, agricultural waste, or from plant materials resulting from selective removal of invasive species or the repurposing of land.

(6) New geothermal resource--An energy resource interconnected after January 1, 2014, that derives electrical power from underground thermal or hydrostatic energy.

(7) New solar resource--An energy resource interconnected after January 1, 2013, that derives energy by converting solar energy to electric energy.

[~~(7) New facilities--Renewable energy generators placed in service on or after September 1, 1999. A new facility includes the incremental capacity and associated energy from an existing renewable facility achieved through repowering activities undertaken on or after September 1, 1999.~~]

(8) Off-grid generation--The generation of renewable energy in an application that is not interconnected to a utility transmission or distribution system.

(9) Opt-Out Notice--Written notice submitted to the commission by a transmission-level voltage customer pursuant to PURA §39.904(m-1).

(10) Program administrator--The entity approved by the commission that is responsible for carrying out the administrative responsibilities related to the renewable energy credits trading program as set forth in subsection (g) of this section and other responsibilities set forth in this section.

(11) REC aggregator--An entity managing the participation of two or more microgenerators in the REC trading program.

(12) REC offset (offset)--A REC offset represents one megawatt-hour (MWh) of renewable energy from an existing facility that is not eligible to earn renewable energy credits [~~or compliance premiums~~].

(13) Renewable energy credit (REC or credit)--A REC represents one MWh of [~~renewable~~] energy that is physically metered and verified in Texas and meets the requirements set forth in subsection (e) of this section.

(14) Renewable energy credit account (REC account)--An account maintained by the renewable energy credits trading program administrator for the purpose of tracking the production, sale, transfer, purchase, and retirement of RECs [~~or compliance premiums~~] by a program participant.

(15) Renewable energy credits trading program (trading program)--The process of awarding, trading, tracking, and submitting RECs [~~or compliance premiums~~] as a means of meeting the renewable energy requirements set out in subsection (d) of this section.

(16) Renewable energy resource (renewable resource)--A resource that produces energy derived from renewable energy technologies.

(17) Renewable energy storage device--A facility using electric storage technologies to store renewable energy. Examples of renewable energy storage devices are batteries, flywheels, pumped hydropower storage, and compressed air energy storage.

(18) [~~(17)~~] Renewable energy technology--Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun, or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

(19) [~~(18)~~] Renewable Portfolio Standard (RPS)--The amount of capacity required to meet the requirements of PURA §39.904 pursuant to subsection (h) of this section.

(20) [~~(19)~~] Repowered Facility--An existing facility that has been modernized or upgraded to use renewable energy technology to produce electricity consistent with this rule.

(21) [~~(20)~~] Retail entity--Municipally-owned utilities, generation and transmission cooperatives and distribution cooperatives that offer customer choice; retail electric providers (REPs); and investor-owned utilities that have not unbundled pursuant to PURA Chapter 39.

(22) [~~(21)~~] Settlement period--The first calendar quarter following a compliance period in which the settlement process for that compliance period takes place.

[~~(22) Small producer--A renewable resource that is less than ten megawatts (MW) in size.~~]

(23) Tier 1 renewable energy credit (Tier 1 REC)--A REC earned by a new solar resource.

(24) Tier 2 renewable energy credit (Tier 2 REC)--A REC earned by a new biomass or new geothermal resource.

(25) Tier 3 renewable energy credit (Tier 3 REC)--A REC earned by a renewable energy resource that is neither a new solar, a new biomass, nor a new geothermal resource.

(26) [~~(23)~~] Transmission-level voltage customer--A customer that receives electric service at 60 kilovolts (kV) or higher or that receives electric service directly through a utility-owned substation that is connected to the transmission network at 60 kV or higher.

(d) Renewable energy credits trading program (trading program). Renewable energy credits may be generated, transferred, and retired by renewable energy power generators certified pursuant to subsection (o) of this section, retail entities, and other market participants as set forth in this section.

(1) The program administrator shall apportion an RPS requirement among all retail entities as a percentage of the retail sales of each retail entity as set forth in subsection (h) of this section.

(2) Each retail entity shall be responsible for meeting its RPS requirement by retiring sufficient RECs or making alternative compliance payments, as set forth in subsections (h) and (m) [~~(l)~~] of this section to comply with this section. The requirement to retire RECs or make alternative compliance payments to comply with this section becomes effective on the date a retail entity begins serving retail electric customers in Texas or, for an electric utility, as specified by law.

(3) [~~(2)~~] A power generating company may participate in the program and may generate RECs and buy or sell RECs as set forth in subsection (m) [~~(l)~~] of this section.

(4) [~~(3)~~] RECs shall be credited on an energy basis as set forth in subsection (m) [~~(l)~~] of this section.

(5) [~~(4)~~] Municipally-owned utilities and distribution cooperatives that do not offer customer choice have no RPS requirement. However, regardless of whether the municipally-owned utility or distribution cooperative offers customer choice, a municipally-owned utility or distribution cooperative possessing renewable energy resources that meet the requirements of subsection (e) of this section may sell RECs generated by such a resource [~~to retail entities~~] as set forth in subsection (m) [~~(l)~~] of this section.

(6) [~~(5)~~] Except where specifically stated, the provisions of this section shall apply uniformly to all participants in the trading program.

(e) Facilities eligible for producing RECs [~~and compliance premiums~~] in the renewable energy credits trading program. For a renewable facility to be eligible to produce RECs [~~and compliance premiums~~] in the trading program it must be either a renewable energy resource [~~new facility, a small producer,~~] or a repowered facility as defined in subsection (c) of this section and must also meet the requirements of this subsection.

(1) - (7) (No change.)

(8) A renewable energy storage device that discharges electric energy may generate a renewable energy credit of any tier for energy it discharges if the operator has retired a renewable energy credit of the same tier in connection with charging the storage device for each MWH of energy it discharges. All energy discharged for the generation of renewable energy credits must be from renewable resources.

(9) Any production of gas from biomass within the state that is delivered into a gas transmission or distribution system and is used as fuel in an electric generating facility or delivered directly to a generation facility whose owner or operator is a municipally owned utility, an electric cooperative, or is registered as a power generation company, is eligible to produce Tier 2 or Tier 3 RECs based upon the conversion of the thermal energy in BTUs to electric energy in kWh, using for the conversion factor the system-wide average heat rate of the gas-fired units of the power generation company if delivered into a gas transmission or distribution system or the specific gas-fired unit average heat rate for the volume of the gas consumed if delivered directly to a generation facility. To qualify for producing RECs, the producer of gas from biomass must register as a REC generator under subsection (o) of this section, provide the program administrator a copy of its contract to sell such gas to a power generation company that delivers energy in Texas in accordance with paragraph (4) of this subsection, and provide the program administrator documentation of the power generation company's rate of conversion of thermal energy to electric energy.

(f) Facilities not eligible for producing RECs in the renewable energy credits trading program. A renewable energy capacity addition associated with an emissions reductions project described in Health and Safety Code §382.05193, that is used to satisfy the permit requirements in Texas Health and Safety Code §382.0519 [~~facility~~] is not eligible to produce RECs in the trading program. [~~if it is:~~]

[(1) A renewable energy capacity addition associated with an emissions reductions project described in Health and Safety Code §382.05193, that is used to satisfy the permit requirements in Health and Safety Code §382.0519; or]

[(2) An existing facility that is not a small producer as defined in subsection (c) of this section or has not been repowered as permitted under subsection (e) of this section.]

(g) Responsibilities of program administrator. The commission shall appoint an independent entity to serve as the trading program administrator. At a minimum, the program administrator shall perform the following functions:

(1) Create accounts that track RECs and alternative compliance payments [or compliance premiums] for each participant in the trading program;

(2) Award RECs [or compliance premiums] to registered renewable energy facilities on a quarterly basis based on verified meter reads;

[(3) Award offsets to retail entities on an annual basis based on a nomination submitted by the retail entity pursuant to subsection (i) of this section.]

(3) [(4)] Annually record the retirement of RECs and remission of alternative compliance payments of each retail entity [or compliance premiums that each retail entity submits];

(4) [(5)] Retire RECs at the end of each REC's compliance life;

(5) [(6)] Maintain public information on its website that provides trading program information to interested buyers and sellers of RECs;

[(7) Create an exchange procedure where persons may purchase and sell RECs or compliance premiums. The exchange shall ensure the anonymity of persons purchasing or selling RECs or compliance premiums. The program administrator may delegate this function to an independent third party, subject to commission approval;]

(6) [(8)] Make public each month the total energy sales of retail entities in Texas for the previous month;

(7) [(9)] Perform audits of generators participating in the trading program to verify accuracy of metered production data;

(8) [(10)] Allocate the RPS requirement to each retail entity in accordance with subsection (h) of this section; and

(9) [(11)] Submit an annual report to the commission. The program administrator shall submit a report to the commission on or before May 15 of each calendar year. The report shall contain information pertaining to renewable energy power generators and retail entities. At a minimum, the report shall contain:

(A) the amount of existing and new renewable energy capacity in MW installed in the state by technology type, the owner/operator of each facility, the date each facility began to produce energy, the amount of energy generated in megawatt-hours (MWh) each quarter for all capacity participating in the trading program or that was retired from service; [and]

(B) a listing of all retail entities participating in the trading program, and for each retail entity its RPS requirement, the number of RECs retired and the amount of any alternative compliance payments made; and [each retail entity's RPS requirement, the number of offsets used by each retail entity, the number of RECs retired by each retail entity, the number of compliance premiums retired by each retail entity;]

(C) a listing of all retail entities that were in compliance with the RPS requirement, a listing of all retail entities that failed to comply with the RPS requirement, and the deficiency of each retail entity that failed to retire sufficient RECs or remit alternative compliance payments [premiums] to meet its RPS requirement.

(h) Allocation of RPS requirement to retail entities. The program administrator shall allocate RPS requirements among retail entities. [Any renewable capacity that is retired before January 1, 2015 or any capacity shortfalls that arise due to purchases of RECs from out-of-state facilities shall be replaced and incorporated into the allocation methodology set forth in this subsection. Any changes to the allocation methodology to reflect replacement capacity shall occur two compliance periods after the facility is retired or the capacity shortfall occurs.] The program administrator shall use the following methodology to determine the total annual RPS requirement for a given year and the final RPS allocation for individual retail entities:

(1) The total statewide RPS requirement for each compliance period shall be calculated in terms of MWh and shall be equal to the applicable capacity requirement set forth in this paragraph multiplied by 8,760 hours per year, multiplied by the appropriate capacity conversion factor set forth in subsection (j) or (k) of this section. The renewable energy capacity requirements for the compliance period beginning January 1[,] of the year indicated shall be:

[(A) 1,400 MW of new resources in 2006;]

[(B) 1,400 MW of new resources in 2007;]

[(C) 2,392 MW of new resources in 2008;]

[(D) 2,392 MW of new resources in 2009;]

(A) [(E)] 4,264 MW of renewable [3,384MW of new] resources in 2010;

(B) [(F)] 4,264 MW of renewable [3,384 MW of new] resources in 2011;

(C) [(G)] 5,256 MW of renewable [4,376 MW of new] resources in 2012;

(D) [(H)] 5,256 MW of renewable [4,376 MW of new] resources in 2013;

(E) [(I)] 5,880 [5,000] MW of renewable [new] resources in 2014, including 5 MW from new solar resources and 10 MW from new geothermal and/or new biomass resources; and

(F) [(J)] 5,880 MW of renewable [5,000 MW of new] resources for each year after 2014 until 2030, including:[.]

*(i)* 10 MW from new solar and 20 MW from new geothermal and/or new biomass resources in 2015;

*(ii)* 20 MW from new solar and 40 MW from new geothermal and/or new biomass resources in 2016;

*(iii)* 40 MW from new solar and 80 MW from new geothermal and/or new biomass resources in 2017;

*(iv)* 80 MW from new solar and 160 MW from new geothermal and/or new biomass resources in 2018; and

*(v)* 167 MW from new solar and 333 MW from new geothermal and/or new biomass resources in every year after 2018.

(2) The final RPS allocation for an individual retail entity for a compliance period shall be calculated as follows:

(A) Beginning with the 2012 [2008] compliance period, prior to the preliminary RPS allocation each retail entity's total retail energy sales are reduced by [to exclude] the consumption of customers

that opt-out [~~opt out~~] in accordance with subsection (i) [~~(j)~~] of this section.

(B) Each retail entity's [~~preliminary~~] RPS allocation is determined by dividing its total retail energy sales in Texas (excluding consumption of customers that opt-out) by the total retail sales in Texas of all retail entities, and multiplying that percentage by the total statewide RPS requirement for that compliance period.

*(i)* A Tier 1 RPS allocation shall be based on the new solar resource requirement set out in paragraph (1) of this subsection for the year.

*(ii)* A Tier 2 RPS allocation shall be based on the new geothermal and new biomass resource requirement set out in paragraph (1) of this subsection for the year.

*(iii)* A Tier 3 RPS allocation shall be based on the total renewable resource requirement (other than new geothermal and new biomass resources) in paragraph (l) of this subsection for the year.

[~~(B) The adjusted RPS allocation for each retail entity that is entitled to an offset is determined by reducing its preliminary RPS allocation by the offsets to which it qualifies, as determined under subsection (i) of this section, with the maximum reduction equal to the retail entity's preliminary RPS allocation. The total reduction for all retail entities is equal to the total usable offsets for that compliance period.~~]

[~~(C) Each retail entity's final RPS allocation for a compliance period shall be increased to recapture the total usable offsets calculated under subparagraph (B) of this paragraph. The additional RPS allocation shall be calculated by dividing the retail entity's preliminary RPS allocation by the total preliminary RPS allocation of all retail entities. This fraction shall be multiplied by the total usable offsets for that compliance period and this amount shall be added to the retail entity's adjusted RPS allocation to produce the retail entity's final RPS allocation for the compliance period.~~]

(3) A REC offset that was generated prior to January 1, 2010 may be retired in accordance with the rules that were in effect prior to the effective date of this paragraph, except that it may not be retired to satisfy a new solar, new biomass or new geothermal resource requirement. [~~Concurrent with determining final individual RPS allocations for the current compliance period in accordance with this subsection, the program administrator shall recalculate the final RPS allocations for the previous compliance periods, taking into account corrections to retail sales resulting from resettlements. The difference between a retail entity's corrected final RPS allocation and its original final RPS allocation for the previous compliance periods shall be added to or subtracted from the retail entity's final RPS allocation for the current compliance period.~~]

[~~(i) Nomination and award of REC offsets.~~]

[~~(1) A REP, municipally-owned utility, G&T cooperative, distribution cooperative, or an affiliate of a REP, municipally-owned utility, or distribution cooperative, may apply offsets to meet all or a portion of its renewable energy purchase requirement, as calculated in subsection (h) of this section, only if those offsets were nominated in a filing with the commission by June 1, 2001.~~]

[~~(2) The program administrator shall award offsets consistent with the commission's actions to verify designations of REC offsets and with this section.~~]

[~~(3) REC offsets shall be equal to the average annual MWh output of an existing resource for the years 1991-2000 or the entire life of the existing resource, whichever is less.~~]

[~~(4) REC offsets qualify for use in a compliance period under subsection (h) of this section only to the extent that:~~]

[~~(A) The resource producing the REC offset has continuously since September 1, 1999 been owned by or its output has been committed under contract to a utility, municipally-owned utility, or cooperative (or successor in interest) nominating the resource under paragraph (1) of this subsection or, if the resource has been committed under a contract that expired after September 1, 1999 and before January 1, 2002, it was owned by or its output was committed under contract to a utility, municipally-owned utility, or cooperative on January 1, 2002; and~~]

[~~(B) The facility producing the REC offsets is operated and producing energy during the compliance period in a manner consistent with historic practice.~~]

[~~(5) If the production of energy from a facility that is eligible for an award of REC offsets ceases for any reason, or if the power purchase agreement with the facility's owner (or successor in interest) that is referred to in paragraph (4)(A) of this subsection has lapsed or is no longer in effect, the retail entity shall no longer be awarded REC offsets related to the facility.~~]

[~~(6) REC offsets shall not be traded.~~]

(i) [~~(j)~~] Opt-out notice.

(1) A customer receiving electrical service at transmission-level voltage who submits an opt-out notice to the commission for the applicable compliance period shall have its load excluded from the RPS calculation.

(2) An investor-owned utility that is subject to a renewable energy requirement under this section shall not collect costs attributable to the REC program from an eligible customer who has submitted an opt-out notice. An investor-owned utility whose rates include the cost of RECs shall file a tariff to implement this subsection, not later than 30 days after the effective date of this section.

(3) A customer opt-out notice must be filed in the commission-designated project number before the beginning of a compliance period for the notice to be effective for that period. Each opt-out notice must include the name of the individual customer opting out, the customer's ESI IDs, the retail entities serving those ESI IDs, and the term for which the notice is effective, which may not exceed two years. The customer opting out must also provide the information included in the opt-out notice directly to ERCOT and may request that ERCOT protect the customer's ESI ID and consumption as confidential information. [~~For notices submitted for the 2008 compliance period, a customer may amend a notice to include this information not later than January 15, 2009, if its initial notice did not include the information.~~] A customer may revoke a notice under this subsection at any time prior to the end of a compliance period by filing a letter in the designated project number and providing notice to ERCOT.

(j) Capacity conversion factor for new biomass and new geothermal resources. The capacity conversion factor for new solar resources shall be 25%; the capacity conversion factor for new biomass and new geothermal resources shall be 90%, unless:

(1) At least 10 MW of solar resources (which, except for the date of interconnection, meet the definition of new solar resources in this section) have been in production for at least two years, in which case the capacity conversion factor shall be calculated according to subsection (k) of this section, using performance data for the solar resources.

(2) At least 10 MW of biomass resources (which, except for the date of interconnection, meet the definition of new biomass re-

sources in this section) have been in production for at least two years, in which case the capacity conversion factor shall be calculated according to subsection (k) of this section, using performance data for the biomass resources.

(3) At least 10 MW of geothermal resources (which, except for the date of interconnection, meet the definition of new geothermal resources in this section) have been in production for at least two years, in which case the capacity conversion factor shall be calculated according to subsection (k) of this section, using performance data for the geothermal resources.

(k) Calculation of capacity conversion factor. The capacity conversion factor used by the program administrator to allocate credits to retail entities shall be calculated during the fourth quarter of each odd-numbered compliance year. The capacity conversion factor shall:

(1) Be based on actual generator performance data for the previous two years for all renewable resources in the trading program during that period for which at least 12 months of performance data are available.

(2) Represent a weighted average of generator performance; and

(3) Use all actual generator performance data that is available for each renewable resource, excluding data for testing periods.

(l) Alternative compliance payments for Tier 1 and Tier 2 RECs. A retail entity may meet all or a portion of its new non-wind RPS requirement, as calculated in subsection (h) of this section, by making alternative compliance payments to the program administrator.

(1) A retail entity's solar RPS requirement shall be reduced by one Tier 1 REC for every $120 the retail entity remits in alternative compliance payments.

(2) A retail entity's non-wind RPS requirement shall be reduced by one Tier 2 REC for every $60 the retail entity remits in alternative compliance payments.

(3) Alternative compliance payments received by the program administrator shall be remitted to the commission.

(m) [~~(l)~~] Production, transfer, and expiration of RECs. The program administrator shall administer a trading program for renewable energy credits in accordance with the requirements of this subsection.

(1) The owner of a renewable energy resource shall earn one REC when a MWh is metered at that renewable energy resource. The program administrator shall record the energy in metered MWh and credit the REC account of the renewable energy resource that generated the energy on a quarterly basis. Quarterly production shall be rounded to the nearest whole MWh, with fractions of 0.5 MWh or greater rounded up. RECs shall be issued in the following categories:

(A) A Tier 1 REC shall be issued for energy produced by a new solar resource;

(B) A Tier 2 REC shall be issued for energy produced by a new biomass or new geothermal resource; and

(C) A Tier 3 REC shall be issued for energy produced by any other renewable resource.

(2) The transfer of RECs between parties shall be effective only when the transfer is recorded by the program administrator.

(3) The program administrator shall require that RECs be adequately identified prior to recording a transfer and shall issue an acknowledgement of the transaction to parties upon provision of adequate information. At a minimum, the following information shall be provided:

(A) identification of the parties;

(B) REC serial number, REC issue date, and the renewable energy resource that produced the REC;

(C) the number of RECs to be transferred; and

(D) the transaction date.

(4) A retail entity shall surrender RECs to the program administrator for retirement from the market in order to meet its RPS requirement for a compliance period. The program administrator will document all REC retirements annually.

(5) On or after each April 1, the program administrator will retire RECs that have not been retired by retail entities and have reached the end of their compliance life.

(6) The program administrator may establish a procedure to ensure that the award, transfer, and retirement of credits are accurately recorded.

(7) The issue date of RECs created by a renewable energy resource shall coincide with the beginning of the compliance period (calendar year) in which the credits are generated. All RECs shall have a compliance life of three compliance periods, after which the program administrator will retire them from the trading program for compliance purposes.

(8) Each REC that is not used in the compliance period in which it was created may be banked and is valid for the next two compliance periods.

~~[(m) Target for renewable technologies other than wind power. In order to meet the target of at least 500 MW of the total installed renewable capacity after September 1, 2005, coming from a renewable energy technology other than a source using wind energy as set forth in subsection (a)(1) of this section, the program administrator shall award compliance premiums to certified REC generators other than those powered by wind that were installed and certified by the commission pursuant to subsection (o) of this section after September 1, 2005. A compliance premium is created in conjunction with a REC.]~~

~~[(1) For eligible non-wind renewable technologies, one compliance premium shall be awarded for each REC awarded for energy generated after December 31, 2007.]~~

~~[(2) Except as provided in this subsection, the award, retirement, trade, and registration of compliance premiums shall follow the requirements of subsections (d), (l) and (n) of this section.]~~

~~[(3) A compliance premium may be used by any entity toward its RPS requirement pursuant to subsection (h) of this section.]~~

~~[(4) The program administrator shall increase the statewide RPS requirement calculated for each compliance period pursuant to subsection (h)(1) of this section by the number of compliance premiums retired during the previous compliance period.]~~

(n) Settlement process. The first quarter following the compliance period shall be the settlement period during which the following actions shall occur:

(1) By January 31, the program administrator will notify each retail entity of its total RPS requirement for the previous compliance period as determined pursuant to subsection (h) of this section.

(2) By March 31, each retail entity shall submit credits from its account or remit alternative compliance payments to the program administrator [~~or compliance premiums to the program~~

~~administrator from its account~~] equivalent to its RPS requirement for the previous compliance period. If the retail entity does not meet its RPS requirement by submitting sufficient credits or paying alternative compliance payments [~~submit sufficient credits or compliance premiums to satisfy its obligation~~], the retail entity is subject to the penalty provisions in subsection (p) of this section.

(A) The RPS requirement for Tier 3 RECs may be satisfied by submitting Tier 1, Tier 2, or Tier 3 RECs or paying an alternative compliance payment for each megawatt hour of the requirement.

(B) The RPS requirement for Tier 2 RECs may be satisfied by submitting Tier 1 or Tier 2 RECs or paying an alternative compliance payment for each megawatt hour of the requirement.

(C) The RPS requirement for Tier 1 RECs may be satisfied by submitting Tier 1 RECs or paying a solar alternative compliance payment for each megawatt hour of the requirement.

(3) The program administrator may request the commission to adjust the deadlines set forth in this section if changes to the ERCOT settlement calendar or other factors affect the availability of reliable retail sales data.

(o) Certification of renewable energy facilities. The commission shall certify all renewable facilities that will produce RECs [~~either REC offsets, RECs, or compliance premiums~~] for sale in the trading program. To be awarded RECs[~~, or REC offsets, or compliance premiums,~~] a power generator must complete the certification process described in this subsection. The program administrator shall not award [~~offsets,~~] RECs[~~, or compliance premiums~~] for energy produced by a power generator before it has been certified by the commission.

(1) The designated representative of the generating facility or renewable energy storage device shall file an application with the commission on a form approved by the commission for each renewable energy generation facility or storage device. At a minimum, the application shall include the location, owner, technology, and rated capacity of the facility and shall demonstrate that the facility meets the resource eligibility criteria in subsection (e) of this section. Any subsequent changes to the information in the application shall be filed with the commission within 30 days of such changes. The owner of the storage facility shall also register as a power generation company or amend its registration to report the storage facility as a generating facility.

(2) No later than 30 days after the designated representative files the certification form with the commission, the commission shall inform both the program administrator and the designated representative whether the renewable facility has met the certification requirements. At that time, the commission shall either certify the renewable facility as eligible to receive RECs[~~, offsets, or compliance premiums,~~] or describe any insufficiencies to be remedied. If the application is contested, the time for acting is extended for such time as is necessary for commission action.

(3) Upon receiving notice of certification of new facilities, the program administrator shall create a REC account for the designated representative of the renewable energy resource.

(4) - (5) (No change.)

(p) Penalties and enforcement. If by April 1 of the year following a compliance period the program administrator determines that a retail entity has not retired sufficient credits or made alternative compliance payments to satisfy its RPS requirement [~~or compliance premiums to satisfy its allocation~~], the retail entity shall:

(1) be subject to an administrative penalty pursuant to PURA §15.023, of $50 for each deficient Tier 3 REC and an amount equal to twice the alternative compliance payment for each Tier 1 and Tier 2 REC that the retail entity is deficient; and [~~per MWh that is deficient.~~]

(2) comply with the applicable subsection of this rule.

(q) Microgenerators and REC aggregators. A REC aggregator may manage the participation of multiple microgenerators in the REC trading program. The program administrator shall assign to the REC aggregator all RECs accrued by the microgenerators who are under a REC management contract with the REC aggregator.

(1) The microgenerator's units shall be installed and connected to the grid in compliance with the sections in this chapter [~~P.U.C. Substantive Rules~~], applicable interconnection standards adopted pursuant to the sections in this chapter [~~P.U.C. Substantive Rules~~], and federal rules.

(2) - (4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 6, 2011.

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Adriana A. Gonzales
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Public Utility Commission of Texas
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# SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION
# DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES

## 16 TAC §25.211

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §39.101(b)(3), which entitles a customer to have access to on-site distributed generation and to providers of energy generated by renewable energy resources; §39.101(e), which gives the commission the authority to adopt and enforce rules as may be necessary or appropriate to carry out §39.101(a) - (d), including rules for minimum service standards for a retail electric provider relating to interconnection and use of on-site generation; §39.351, which provides that a person may not generate electricity unless the person is registered with the commission as a power generation company in accordance with this section; §39.904, which establishes goals and targets for renewable energy, including a target of having at least 500 megawatts of capacity from a technology other than wind energy, directs the commission to establish a renewable energy credit trading program, and authorizes the commission to adopt rules to administer the renewable energy program established in this section; §39.914, which addresses surplus solar generation produced by school buildings; and §39.916, which addresses interconnection of distributed renewable generation.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.101, 39.351, 39.904, 39.914, and 39.916.

*§25.211. Interconnection of On-Site Distributed Generation (DG).*

(a) Application. Unless the context clearly indicates otherwise, in this section and §25.212 of this title (relating to Technical Requirements for Interconnection and Parallel Operation of On-Site Distributed Generation) the term "electric utility" applies to all electric utilities as defined in the Public Utility Regulatory Act (PURA) §31.002 that own and operate a distribution system in Texas. [~~This section shall not apply to an electric utility subject to PURA §39.102(c) until the expiration of the utility's rate freeze period.~~]

(b) Purpose. The purpose of this section is to clearly state the terms and conditions that govern the interconnection and parallel operation of on-site distributed generation in order to implement PURA §39.101(b)(3), which entitles all Texas electric customers to access to on-site distributed generation, to provide cost savings and reliability benefits to customers, to establish technical requirements that will promote the safe and reliable parallel operation of on-site distributed generation resources, to enhance both the reliability of electric service and economic efficiency in the production and consumption of electricity, and to promote the use of distributed resources in order to provide electric system benefits during periods of capacity constraints. Sales of power by a distributed generator in the intrastate wholesale market are subject to the provisions of this title relating to open-access comparable transmission service for electric utilities in the Electric Reliability Council of Texas (ERCOT).

(c) Definitions. The following words and terms when used in this section and §25.212 of this title shall have the following meanings, unless the context clearly indicates otherwise:

(1) Application for interconnection and parallel operation with the utility system or application--The standard form of application approved by the commission.

[~~(2) Banking--A method of accounting for energy produced by a customer for export into the distribution system. The host control area accepts energy from the customer to meet its own energy needs during a five -to 30-day period, credits this energy to the customer's account, and subsequently produces and, in the five- to 30-day period immediately following acceptance of the energy, disburses the energy accrued under the customer's account to the receiving control area specified by the customer. Disbursement of the accrued energy shall follow a pre-arranged schedule mutually acceptable to the host control area, the receiving control area, and the DG customer. Such schedule shall attempt to keep the host control area neutral with respect to the market value of the energy transferred on behalf of the exporting customer.~~]

(2) [~~(3)~~] Company--An electric utility operating a distribution system.

(3) [~~(4)~~] Customer--Any entity interconnected to the company's utility system for the purpose of receiving or exporting electric power from or to the company's utility system.

(4) [~~(5)~~] Facility--An electrical generating installation consisting of one or more on-site distributed generation units. The total capacity of a facility's individual on-site distributed generation units may exceed ten megawatts (MW); however, no more than ten MW of a facility's capacity will be interconnected at any point in time at the point of common coupling under this section.

(5) [~~(6)~~] Interconnection--The physical connection of distributed generation to the utility system in accordance with the requirements of this section so that parallel operation can occur.

(6) [~~(7)~~] Interconnection agreement--The standard form of agreement, which has been approved by the commission. The interconnection agreement sets forth the contractual conditions under which a company and a customer agree that one or more facilities may be interconnected with the company's utility system.

(7) [~~(8)~~] Inverter-based protective function--A function of an inverter system, carried out using hardware and software, that is designed to prevent unsafe operating conditions from occurring before, during, and after the interconnection of an inverter-based static power converter unit with a utility system. For purposes of this definition, unsafe operating conditions are conditions that, if left uncorrected, would result in harm to personnel, damage to equipment, unacceptable system instability or operation outside legally established parameters affecting the quality of service to other customers connected to the utility system.

(8) [~~(9)~~] Network service--Network service consists of two or more utility primary distribution feeder sources electrically tied together on the secondary (or low voltage) side to form one power source for one or more customers. The service is designed to maintain service to the customers even after the loss of one of these primary distribution feeder sources.

(9) [~~(10)~~] On-site distributed generation (or distributed generation)--An electrical generating facility located at a customer's point of delivery (point of common coupling) of ten megawatts (MW) or less and connected at a voltage less than 60 kilovolts (kV) which may be connected in parallel operation to the utility system.

(10) [~~(11)~~] Parallel operation--The operation of on-site distributed generation by a customer while the customer is connected to the company's utility system.

(11) [~~(12)~~] Point of common coupling--The point where the electrical conductors of the company utility system are connected to the customer's conductors and where any transfer of electric power between the customer and the utility system takes place, such as switchgear near the meter.

(12) [~~(13)~~] Pre-certified equipment--A specific generating and protective equipment system or systems that have been certified as meeting the applicable parts of this section relating to safety and reliability by an entity approved by the commission.

(13) [~~(14)~~] Pre-interconnection study--A study or studies that may be undertaken by a company in response to its receipt of a completed application for interconnection and parallel operation with the utility system. Pre-interconnection studies may include, but are not limited to, service studies, coordination studies and utility system impact studies.

(14) [~~(15)~~] Stabilized--A company utility system is considered stabilized when, following a disturbance, the system returns to the normal range of voltage and frequency for a duration of two minutes or a shorter time as mutually agreed to by the company and customer.

(15) [~~(16)~~] Tariff for interconnection and parallel operation of distributed generation--The commission-approved tariff for interconnection and parallel operation of distributed generation including the application for interconnection and parallel operation of distributed generation [~~DG~~] and pre-interconnection study fee schedule.

(16) [~~(17)~~] Unit--A power generator.

(17) [~~(18)~~] Utility system--A company's distribution system below 60 kV to which the generation equipment is interconnected.

(d) Terms of Service.

[(1) Banking. A company operating in ERCOT shall make banking services available to any customer upon the customer's request. This obligation continues until the ERCOT Independent System Operator begins operating ERCOT as a single control area.]

(1) [(2)] Distribution line charge. No distribution line charge shall be assessed to a customer for exporting energy to the utility system.

(2) [(3)] Interconnection operations and maintenance costs. No charge for operation and maintenance of a utility system's facilities shall be assessed against a customer for exporting energy to the utility system.

(3) [(4)] Scheduling fees. A one-time scheduling fee for each banking period may be assessed for the disbursement of banked energy. No other scheduling fees may be assessed against an exporting distributed generation [DG] customer.

(4) [(5)] Transmission charges. No transmission charges shall be assessed to a customer for exporting energy. For purposes of this paragraph, the term transmission charges means transmission access and line charges, transformation charges, and transmission line loss charges.

(5) [(6)] Contract reformation. All interconnection contracts shall be conformed to meet the requirements of this section within 60 days of adoption.

(6) [(7)] Tariffs. No later than 30 days after the effective date of this section as amended, each electric utility shall file a tariff or tariffs for interconnection and parallel operation of distributed generation[, including tariffs for banking and scheduling fees,] in conformance with the provisions of this section. This provision does not require a utility that filed an interconnection study fee tariff prior to the effective date of this rule as amended to refile such tariff. The utility may file a new tariff or a modification of an existing tariff. Such tariffs shall ensure that back-up, supplemental, and maintenance power is available to all customers and customer classes that desire such service, if the electric utility provides retail service to the customer [until January 1, 2002]. Any modifications of existing tariffs or offerings of new tariffs relating to this subsection shall be consistent with the commission-approved form. Concurrent with the tariff filing in this section, each utility shall submit:

(A) a schedule detailing the charges of interconnection studies and all supporting cost data for the charges;

(B) a standard application for interconnection and parallel operation of distributed generation; and

(C) the interconnection agreement approved by the commission.

(e) (No change.)

(f) Incremental demand charges. During the term of an interconnection agreement a utility may require that a customer disconnect its distributed generation unit and/or take it off-line as a result of utility system conditions described in subsection (e)(3) and (4) of this section. Incremental demand charges arising from disconnecting the distributed generator as directed by company during such periods shall not be assessed by company to the customer. [After January 1, 2002, the distribution utility shall not be responsible for the provision of generation services or their related charges.]

(g) Pre-interconnection studies for non-network interconnection of distributed generation. A utility may conduct a service study, coordination study or utility system impact study prior to interconnection of a distributed generation facility. In instances where such studies are deemed necessary, the scope of such studies shall be based on the characteristics of the particular distributed generation facility to be interconnected and the utility's system at the specific proposed location. By agreement between the utility and its customer, studies related to interconnection of on-site distributed generation [DG] on the customer's premise may be conducted by a qualified third party.

(1) - (2) (No change.)

(h) - (m) (No change.)

(n) Reporting requirements. Each electric utility shall maintain records concerning applications received for interconnection and parallel operation of distributed generation. Such records will include the name of the applicant, the business address of the applicant, and the location of the proposed facility by county and utility service area, the capacity rating of the facility in kilowatts, whether the facility is a renewable energy resource, as defined in §25.173 of this title (relating to Goal for Renewable Energy), the date each application is received, documents generated in the course of processing each application, correspondence regarding each application, and the final disposition of each application. The owner of an on-site distributed generation facility that is interconnected under this section shall report to the utility any change in ownership of the facility and the cessation of operations of a facility. By March 30 of each year, every electric utility shall file with the commission a distributed generation interconnection report for the preceding calendar year that identifies each distributed generation facility interconnected with the utility's distribution system. The report shall list the new distributed generation facilities interconnected with the system since the previous year' report, any distributed generation facilities no longer interconnected with the utility's system since the previous report, the capacity of each facility and whether it is a renewable energy resource, and the feeder or other point on the company's utility system where the facility is connected. The annual report shall also identify all applications for interconnection received during the previous one-year period, and the disposition of such applications. Meeting the requirements of this report is deemed sufficient for purposes of registration of power generating companies (PGCs) and self generators (SGs).

(o) Interconnection disputes. Complaints relating to interconnection disputes under this section shall be handled in an expeditious manner pursuant to §22.242 of this title (relating to Complaints). In instances where informal dispute resolution is sought, complaints shall be presented to the Competitive Markets [Electric] Division. The Competitive Markets [Electric] Division shall attempt to informally resolve complaints within 20 business days of the date of receipt of the complaint. [Unresolved complaints shall be presented to the commission at the next available open meeting.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 6, 2011.

TRD-201100033
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: February 20, 2011
For further information, please call: (512) 936-7223

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# TITLE 28. INSURANCE

# PART 1. TEXAS DEPARTMENT OF INSURANCE

## CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

The Texas Department of Insurance (Department) proposes amendments to §5.9331 and §5.9960, and new §5.9360 and §5.9361, concerning rate filing requirements for certain county mutual insurance companies. The proposed amendments and new sections are necessary to implement House Bill (HB) 2449, 81st Legislature, Regular Session, effective September 1, 2009, relating to rate and rate manual filing requirements and territory rating requirements for certain county mutual insurance companies. The proposed amendment to §5.9960 also removes an expired filing requirement.

HB 2449 amended Insurance Code §912.056 to authorize a county mutual insurance company that, as of September 1, 2001, and continuously thereafter, appointed managing general agents, created districts, or organized local chapters to manage a portion of the county mutual insurance company's business independent of all other business of the company to continue to operate in that manner and to appoint and contract with one or more managing general agents in accordance with the Insurance Code only if the company cedes 85 percent or more of the company's direct and assumed risks to one or more reinsurers and has a private passenger automobile insurance business with a market share of not greater than five percent or that is predominantly nonstandard. HB 2449 further added §912.056(e), which requires a county mutual insurance company described in §912.056(d) to file for each managing general agent, district, or local chapter, the rating information required by the Commissioner of Insurance (Commissioner) by rule. Section 912.056(e) also provides that for a county mutual insurance company described in §912.056(d) each managing general agent, district, or organized local chapter that manages a portion of the county mutual insurance company's business independent of all other business of the company shall be treated as a separate insurer for the purposes of Chapters 544, 2251, 2253, and 2254 of the Insurance Code.

Prior to HB 2449, appointed managing general agents, districts, or organized local chapters have previously engaged in managing a portion of the county mutual insurance company's business independent of all other business of the county mutual insurance company. Under this system the county mutual insurance company made rate and form filings for each independently operating managing general agent, district, or organized local chapter. This process, however, did not lend itself to transparency as the filings were not necessarily designated by the independent entity.

The legislature has determined that this practice may continue only if the county mutual insurance company cedes 85 percent or more of the company's direct and assumed risks to one or more reinsurers and has a private passenger automobile insurance business with a market share of not greater than five percent or that is predominantly nonstandard. The legislature also continued the requirement that it is the obligation of the county mutual insurance company to file for each managing general agent, district, or local chapter, the rating information required by the Commissioner by rule.

To implement HB 2449, it is necessary to amend §5.9331 and §5.9960, and add new Division 10, consisting of §5.9360 and §5.9361. The proposed amendment to §5.9331(b)(2) revises the definition of "insurer", for the purposes of rate and rate manual filing requirements under Subchapter M, Division 6 of this chapter. The definition conforms to the Insurance Code §912.056 in that the county mutual insurance company must meet the requirements specified in §912.056(d) and that the entity must be an appointed managing general agent, district or local chapter that manages a portion of a county mutual company's business independent of all other business of the county mutual insurance company. Including these entities in the definition of insurer designates the information that must be filed, which is essentially the same information as any insurer and works in conjunction with proposed §5.9361(b).

Proposed §5.9360 provides that the purpose of new Division 10 of Subchapter M is to specify additional filing requirements under Divisions 4 and 6 of Subchapter M for county mutual insurance companies operating as described by the Insurance Code §912.056(d). The new division provides operational flexibility by allowing for both the default situation in which the county mutual insurance company will file the information on behalf of the appointed managing general agent, district or local chapter and an alternative situation in which the county mutual insurance company will provide the Department with written consent authorizing the appointed managing general agent, district or local chapter to submit the filings required under Divisions 4 and 6 of Subchapter M.

Proposed §5.9361 provides the additional filing requirements for a county mutual insurance company described by the Insurance Code §912.056(d) and their appointed managing general agents, districts, or local chapters. Section 5.9361(a) requires that, in addition to the information required by Division 4 of Subchapter M, the following information be included: (1) the name and license number of the managing general agent, district, or local chapter of a county mutual insurance company; and (2) contact information for the county mutual if the county mutual's contact information has not already been provided under §5.9310(c)(8). Section 5.9361(b) provides that all rate filings shall be made directly by the county mutual insurance company on the county mutual insurance company's letterhead unless the county mutual insurance company submits written notice with the filing authorizing the submission of rate filings by the managing general agent, district, or local chapter of a county mutual insurance company. Section 5.9361(b) also provides that each rate filing shall include: (1) all information required under §5.9332 of this subchapter, which shall be specific to the independent business operation of the managing general agent, district, or local chapter of a county mutual insurance company; and (2) a list of policy forms and endorsements, including their name, number, and the Department file number, utilized by the managing general agent, district, or local chapter of a county mutual insurance company in its independent business operation. The form information is necessary because the Department must know the terms of the insurance contract and coverage to determine if the rate meets rating standards. Section 5.9361(b) further provides that the submission of a list of policy forms and endorsements does not constitute a form filing under Chapter 2301 of the Insurance Code.

Section 5.9960(c)(2) amends for the purposes of territory rating requirements the definition of "insurer." The amendment is the same as the amendment in §5.9331(b) to the definition of the term "insurer" and the amendment is made for the same reasons.

The proposed amendments and new sections do not address the new solvency requirements for county mutual insurance companies resulting from HB 2449. These changes are addressed separately.

The proposed amendments also update obsolete statutory citations to the Insurance Code resulting from the nonsubstantive revision of the Insurance Code.

Finally, §5.9960(h) required a county mutual insurance company, a Lloyd's plan, or a reciprocal or interinsurance exchange that seeks to use a rate for a subdivision within a county that is greater than 15 percent higher than the rate used in any other subdivision within that county to file its data in support of a greater rate difference no later than March 1, 2004. Since this section has expired, it is necessary to remove it from the Administrative Code.

FISCAL NOTE. Marilyn Hamilton, Associate Commissioner, Property and Casualty Program, has determined that, for each year of the first five years the proposed sections are in effect, there will be no fiscal impact on state or local government as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Hamilton also has determined that for each year of the first five years the proposed sections are in effect, the public benefits anticipated as a result of the proposal are: (1) greater transparency and accountability in the marketplace; and (2) the removal of obsolete, expired, and potentially confusing statutory citations and provisions from the Texas Administrative Code, resulting in greater ease of use and readability of the rules.

*Analysis of Potential Costs for Persons Required to Comply with the Proposal*

The Department anticipates that additional cost to persons required to comply with the proposed amendments and new sections may result from the preparation and submission of written notice authorizing the managing general agent, district, or local chapter to submit rate filings as provided in §5.9361(b)(1); and from the proposed §5.9361(b)(2) requirement that each rate filing include a list of policy forms and endorsements utilized by the managing general agent, district, or local chapter.

HB 2449 amended the Insurance Code §912.056 to authorize a county mutual insurance company that, as of September 1, 2001, and continuously thereafter, appointed managing general agents, created districts, or organized local chapters to manage a portion of the company's business independent of all other business of the company to continue to operate in that manner and to appoint and contract with one or more managing general agents in accordance with the Insurance Code only if the company cedes 85 percent or more of the company's direct and assumed risks to one or more reinsurers and has a private passenger automobile insurance business with a market share of not greater than five percent or that is predominantly nonstandard. This proposal implements this limited authorization and thus applies to: (1) county mutual insurance companies that are described under the Insurance Code §912.056(d); and (2) those appointed managing general agents, created districts, or organized local chapters that manage a portion of the company's business independent of all other business of the county mutual insurance company which are described in §912.056(d).

County mutual insurance companies are not required to write business in this manner. The choice to operate in the manner described by the Insurance Code §912.056(d) is a business decision of the county mutual insurance company and not a requirement of this proposal.

As an insurer, the county mutual insurance company is already required to submit rate and form filings with the Department for each program of insurance that was operated in the manner described by the Insurance Code §912.056(d). Thus, requiring the county mutual insurance company to designate such filings by a managing general agent, district, or local chapter as specified in the Insurance Code and this proposal will not result in additional expenses related to the preparation and submission of rate filings. Likewise, it is not an additional cost if the county mutual insurance company consents to the preparation and submission of the rate filing by the managing general agent, district, or local chapter as authorized in this proposal, because the information must still be gathered and prepared and delegating that activity is a business decision and not an additional cost imposed under this proposal.

However, the proposal does require certain additional information. Proposed §5.9361(a) requires the county mutual insurance company to include on any future filing transmittal form the additional information of: (1) the name and license number of the managing general agent, district, or local chapter of a county mutual insurance company; and (2) contact information for the county mutual if the county mutual's contact information has not already been provided under §5.9310(c)(8). Proposed §5.9361(b)(1) provides that if the managing general agent, district, or local chapter is to submit the rate filing, the county mutual insurance company must submit written notice to the Department authorizing such submissions. Proposed §5.9361(b)(2) requires that each rate filing include a list of policy forms and endorsements utilized by the managing general agent, district, or local chapter.

This proposal imposes these filing requirements on the county mutual insurance company operating as described by the Insurance Code §912.056(d) unless the county mutual insurance company consents to the managing general agent, district, or local chapter performing the function as provided in this proposal. Such an agreement would be a business decision of the parties involved and thus not a cost of imposed by this proposal.

In each situation the information to be submitted is readily available to the county mutual insurance company. The additional cost related to the additional information on the transmittal form required by §5.9361(a) should be additional ink and is thus a deminimus cost. The proposed requirements of §5.9361(b)(1) and (2) would require the preparation of an additional document and submission of the document. However, those documents should not exceed one page each and should require less than 10 minutes to prepare. These submissions could be made separately or could be combined.

The Department considered the following cost components in estimating the costs for county mutual insurance companies to comply with proposed §5.9361(b)(1) and (2). Compliance involves the cost of retrieving the information, drafting the document, printing or copying the document, and submitting the document to the Department. The proposal considers submission of documents by first class mail, because that method of compliance is available to all persons required to comply with this proposal. While there are other methods of generating and submitting required documents that could comply with proposed

§5.9361(b)(1) and (2), the Department anticipates that each person will choose a method of compliance that is the most cost-efficient for them. Choosing a method of compliance is a business decision of each person.

The Department's cost estimates are based on the following factors. The printing cost is based on the Department's latest determination of an estimated cost of $.08 for one printed page ($.07 for paper and one cent for ink). The submission cost is based on postage rates for first class mail which is $.44 cents for one ounce in a standard envelope. The Department estimates a cost of $.05 cents for a standard envelope. The Department anticipates that the actions of retrieving the information and drafting the document will be performed by someone with product knowledge. Titles of such persons may vary, but could include an underwriter or product manager. In this analysis the Department will use the mean hourly wage of $29.84 to calculate the estimated costs. This hourly wage is based on the classification "insurance underwriters" in the Department of Labor's May 2009 Texas State Occupational Employment and Wage Estimates. It is possible that other clerical staff could handle the information in some offices. However, in those instances, the wage costs would be less than those for the underwriter. Therefore, in considering all of these cost factors the Department estimates that the cost of compliance is anticipated to be approximately $6.00 per submission.

The Department does not anticipate any additional costs being created from the removal of the obsolete §5.9960(h) or the nonsubstantive updates to statutory references.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. The Government Code §2006.002(c) provides that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. The Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than $6 million in annual gross receipts. The Government Code §2006.001(1) defines "micro business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has not more than 20 employees. The Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in the Government Code §2006.002(b) - (d) for small businesses.

In accordance with the Government Code §2006.002(c), the Department has determined that the proposal may have an adverse economic impact on small and micro businesses that are managing general agents of county mutual insurance companies described in §912.056(d). The Department has surveyed its records of the industry and estimates that the number of county mutual insurance companies meeting the requirements of §912.056(d) is seven. Six of these seven county mutual insurance companies are part of larger insurance groups and thus are not small or micro for the purposes of the Government Code §2006.002(c) because they are not independently owned and operated organizations. The remaining county mutual insurance company does qualify as a small business even though its net direct written premium exceeds $460 million, because it has approximately 25 employees. Further, the districts and local chapters of a county mutual insurance company are not small or micro businesses because they are created by the county mutual insurance company and are not independently owned and operated organizations. Thus, even though the Insurance Code §912.056(e) provides that districts and local chapters of a county mutual insurance company operating as described in the Insurance Code §912.056(d) be treated like a separate insurers for a limited purpose as provided in the statute, these districts and local chapters are not small or micro businesses for the purposes of the Government Code §2006.002(c). The managing general agents of these county mutual insurance companies operating as described in the Insurance Code §912.056(d) may be small or micro businesses. As of December 31, 2010, 1102 individuals and 495 agencies were licensed as managing general agents by the Department. These licensee businesses vary in size, however, managing general agents would qualify as small or micro businesses for the purposes of Government Code §2006.002(c). The number of managing general agents acting for county mutual insurance companies as described in the Insurance Code §912.056 will vary, but it will be significantly less than the total number of licensees. Because a county mutual insurance company may change its appointed managing general agents and some, if not most, managing general agents would qualify as small or micro businesses for the purposes of Government Code §2006.002(c), this analysis will presume that all are small or micro businesses.

The adverse economic impact on these small or micro businesses may result if the one county mutual insurance company or the managing general agents of the seven county mutual insurance companies operating as described in the Insurance Code §912.056(d) make rate filings, fill out filing transmittal forms, or provide lists of policy forms and endorsements they utilize on behalf of the county mutual insurance companies. These costs are stated in the Public Benefit/Cost Note part of this proposal. However, the burden of these costs being placed on the one qualifying county mutual or the managing general agents is the result of business decisions made by the county mutual insurance companies and the managing general agents and not as a requirement of this of the proposal.

The Department, in accordance with the Government Code §2006.002(c-1), has considered requiring that all rate filings and additional information be submitted directly by the county mutual insurance companies as an alternative method of achieving the purpose of the proposed rule. The Department has determined that this alternative is not practical or reasonable because the decision as to which entity will file the required documents is a business decision of the parties. Precluding county mutual insurance companies from entering into business arrangements allowed by statute that they determine to be in their best interests could frustrate the legislative intent in the Insurance Code §912.056 and the marketplace.

A second alternative method of achieving compliance was to not require the rate filing and the additional policy information from the county mutual insurance company's managing general agent. The Department has determined that this alternative is not practical or reasonable because the additional information is necessary to achieve the purposes of the Insurance Code §912.056. Not requiring the rate filing would be inconsistent with the Insurance Code Chapter 2251, and thus is not an acceptable alternative. Further, as to filing the additional policy form infor-

mation, the Department must have that information to determine if the filed rate meet rating standards.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on February 21, 2011, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to J'ne Byckovski, Chief Actuary, Property and Casualty Actuarial Division, Mail Code 105-5F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing must be submitted separately to the Office of Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

## SUBCHAPTER M. FILING REQUIREMENTS
## DIVISION 6. FILINGS MADE EASY--RATE AND RATE MANUAL FILING REQUIREMENTS

**28 TAC §5.9331**

STATUTORY AUTHORITY. The amendments are proposed pursuant to the Insurance Code §912.056 and §36.001. Section 912.056(e) provides for the commissioner to require, by rule, the filing of rating information by a company described by §912.056(d) for each managing general agent, district, or local chapter. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §912.056, §2253.001 and Chapter 2251.

*§5.9331. Definitions.*

(a) (No change.)

(b) The following words and terms when used in this division shall have the following meanings, unless the context indicates otherwise.

(1) Disallowed expenses--Applies only to filings made in accordance with Insurance Code Article 5.13-2. Payments anticipated to be made to advisory organizations, licensed to do business in Texas, for services authorized by Chapter 1805, Subchapter B of the Insurance Code [~~Article 5.73~~] for the development of statistical plans, data collection and reporting, the development and distribution of prospective loss costs, supplementary rating information, policy forms and endorsements, research, and the performance of inspections, and other activities reasonably related thereto, are not disallowed expenses.

(2) Insurer--An insurer authorized to write property and casualty insurance in this state, including an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, association, Lloyd's plan, or other entity writing insurance in this state. The term includes an affiliate, as described by §823.003 of the Insurance Code, if that affiliate is authorized to write insurance in this state. The term includes an appointed managing general agent, district, or local chapter program of a county mutual insurance company described by the Insurance Code §912.056(d) that manages a portion of that county mutual company's business independent of all other business of that county mutual insurance company and that is to be treated as a separate insurer for the purposes of Chapters 544, 2251, 2253, and 2254 of the Insurance Code as provided in §912.056(e) of the Insurance Code. The term does not include a farm mutual insurance company, an eligible surplus lines insurer under the Insurance Code, the Texas Windstorm Insurance Association, the Texas FAIR Plan Association, or the Texas Automobile Insurance Plan Association.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2011.

TRD-201100082
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: February 20, 2011
For further information, please call: (512) 463-6327

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## DIVISION 10. FILINGS MADE EASY--ADDITIONAL FILING REQUIREMENTS FOR CERTAIN COUNTY MUTUAL INSURANCE COMPANIES

**28 TAC §5.9360, §5.9361**

STATUTORY AUTHORITY. The new sections are proposed pursuant to the Insurance Code §912.056 and §36.001. Section 912.056(e) provides for the commissioner to require, by rule, the filing of rating information by a company described by §912.056(d) for each managing general agent, district, or local chapter. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §912.056, §2253.001 and Chapter 2251.

*§5.9360. Purpose.*

The purpose of this section and §5.9361 of this division (relating to Additional Filing Requirements) is to specify additional filing requirements under Divisions 4 and 6 of this subchapter (relating to Filings Made Easy--Filing Transmittal Form and Requirements for Property and Casualty Form, Rate, Rule, Underwriting Guideline, and Credit Scoring Model Filings; and Filings Made Easy--Rate and Rate Manual Filing Requirements, respectively) for:

(1) a county mutual insurance company described by the Insurance Code §912.056(d); and

(2) an appointed managing general agent, district, or local chapter program of a county mutual insurance company described by

the Insurance Code §912.056(d) that manages a portion of that county mutual company's business independent of all other business of that county mutual insurance company and that is to be treated as a separate insurer for the purposes of Chapters 544, 2251, 2253, and 2254 of the Insurance Code as provided in §912.056(e) of the Insurance Code.

*§5.9361. Additional Filing Requirements.*

(a) Filing Transmittal. In addition to the information required by Division 4 of this subchapter (relating to Filings Made Easy--Filing Transmittal Form and Requirements for Property and Casualty Form, Rate, Rule, Underwriting Guideline, and Credit Scoring Model Filings), the following information shall be included:

(1) the name and license number of the managing general agent, district, or local chapter of a county mutual insurance company; and

(2) contact information for the county mutual insurance company if the county mutual insurance company's contact information has not already been provided under §5.9310(c)(8) of this subchapter (relating to Property and Casualty Filing Transmittal Form).

(b) Rate Filings.

(1) All rate filings shall be made directly by the county mutual insurance company on the county mutual insurance company's letterhead unless the county mutual insurance company submits written notice with the filing authorizing the submission of rate filings by the managing general agent, district, or local chapter.

(2) Each rate filing shall include:

(A) all information required under §5.9332 of this subchapter (relating to Filing Requirements) which shall be specific to the managing general agent, district, or local chapter; and

(B) a list of policy forms and endorsements, including their name, number, and the department file number, utilized by the managing general agent, district, or local chapter. The submission of a list of policy forms and endorsements under this subsection does not constitute a form filing under Chapter 2301 of the Insurance Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2011.

TRD-201100083
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: February 20, 2011
For further information, please call: (512) 463-6327

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## SUBCHAPTER V. TERRITORY RATING REQUIREMENTS

**28 TAC §5.9960**

STATUTORY AUTHORITY. The amendments are proposed pursuant to the Insurance Code §912.056 and §36.001. Section 912.056(e) provides for the commissioner to require, by rule, the filing of rating information by a company described by §912.056(d) for each managing general agent, district, or local chapter. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §912.056, §2253.001 and Chapter 2251.

*§5.9960. Exception to Rating Territory Requirements under §2253.001 of the Insurance Code [~~Article 5.171~~].*

(a) The purpose of this section is to provide an exception to §2253.001 of the Insurance Code [~~Article 5.171~~] for an insurer that writes residential property insurance or personal automobile insurance in the State of Texas.

(b) (No change.)

(c) The following words and terms, when used in this section have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Insurer--An insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write residential property insurance or personal automobile insurance in the State of Texas. The term includes an appointed managing general agent, district, or local chapter program of a county mutual insurance company described by the Insurance Code §912.056(d) that manages a portion of that county mutual company's business independent of all other business of that county mutual insurance company and that is to be treated as a separate insurer for the purposes of Chapters 544, 2251, 2253, and 2254 of the Insurance Code as provided in §912.056(e) of the Insurance Code. The term does not include:

(A) the Texas Windstorm Insurance Association under Chapter 2210 of the Insurance Code [~~Article 21.49~~];

(B) the FAIR Plan Association under Chapter 2211 of the Insurance Code [~~Article 21.49A~~]; or

(C) the Texas Automobile Insurance Plan Association under Chapter 2151 of the Insurance Code [~~Article 21.81~~].

(3) - (5) (No change.)

(d) - (g) (No change.)

~~[(h) A county mutual insurance company, a Lloyd's plan, or a reciprocal or interinsurance exchange that seeks to use a rate for a subdivision within a county that is greater than 15% higher than the rate used in any other subdivision within that county must file its data in support of a greater rate difference, as required by subsection (e), no later than March 1, 2004.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-201100084

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: February 20, 2011
For further information, please call: (512) 463-6327

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# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

### CHAPTER 73. CIVIL RIGHTS

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Chapter 73, Civil Rights, consisting of Subchapter A, Purpose and Application, §73.1 and §73.2; Subchapter B, Discrimination Prohibited, §73.100 and §73.101; Subchapter C, Civil Rights Responsibilities, §§73.200 - 73.212; Subchapter D, Dissemination of Information and Training, §§73.300 - 73.302; Subchapter E, Complaints of Discrimination, §§73.400 - 73.413; Subchapter F, Compliance Reviews and Standards, §73.500 and §73.501; and Subchapter G, Contract Compliance, §73.600.

BACKGROUND AND PURPOSE

The Health and Human Services Commission's (HHSC) Civil Rights Office is proposing rules regarding civil rights, found elsewhere in this issue of the *Texas Register,* that will apply to all health and human services agencies. DADS therefore proposes to repeal Chapter 73, concerning civil rights, as these rules will no longer be needed.

SECTION-BY-SECTION SUMMARY

The proposed repeal of Subchapter A, consisting of §73.1 and §73.2, removes rules concerning purpose and application from DADS' rule base.

The proposed repeal of Subchapter B, consisting of §73.100 and §73.101, removes rules concerning discrimination prohibited from DADS' rule base.

The proposed repeal of Subchapter C, consisting of §§73.200 - 73.212, removes rules concerning civil rights responsibilities from DADS' rule base.

The proposed repeal of Subchapter D, consisting of §§73.300 - 73.302, removes rules concerning dissemination of information and training from DADS' rule base.

The proposed repeal of Subchapter E, consisting of §§73.400 - 73.413, removes rules concerning complaints of discrimination from DADS' rule base.

The proposed repeal of Subchapter F, consisting of §73.500 and §73.501, removes rules concerning compliance reviews and standards from DADS' rule base.

The proposed repeal of Subchapter G, consisting of §73.600, removes rules concerning contract compliance from DADS' rule base.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will not have an adverse economic effect on small businesses or micro-businesses, because there are no requirements related to the repeal with which a small business or micro-business must comply.

PUBLIC BENEFIT AND COSTS

Tom Phillips, DADS Chief Operating Officer, has determined that, for each year of the first five years the repeal is in effect, the public benefit expected as a result of enforcing the repeal is that unnecessary rules will be eliminated from DADS' rule base.

Mr. Phillips anticipates that there will not be an economic cost to persons who are required to comply with the repeal. The repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Nancy Porter at (512) 438-4820 in DADS' Legal Services. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-9R021, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, TX 78714-9030, or street address 701 West 51st Street, Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 9R021" in the subject line.

### SUBCHAPTER A. PURPOSE AND APPLICATION

**40 TAC §73.1, §73.2**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall

study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

*§73.1. Purpose and Application.*

*§73.2. Definitions.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2011.

TRD-201100089
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: February 20, 2011
For further information, please call: (512) 438-3734

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## SUBCHAPTER B. DISCRIMINATION PROHIBITED

### 40 TAC §73.100, §73.101

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

*§73.100. Administrative Practices.*

*§73.101. Criteria and Methods of Administration.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2011.

TRD-201100090
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: February 20, 2011
For further information, please call: (512) 438-3734

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## SUBCHAPTER C. CIVIL RIGHTS RESPONSIBILITIES

### 40 TAC §§73.200 - 73.212

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

*§73.200. Appointment of Civil Rights Director.*
*§73.201. Documentation.*
*§73.202. Methods of Recording and Keeping Statistical Data.*
*§73.203. Office Accessibility.*
*§73.204. Complaint Procedure.*
*§73.205. Program Participation.*
*§73.206. Service Accessibility and Awareness of Special Needs.*
*§73.207. Civil Rights Training.*
*§73.208. Dissemination of Information to Staff.*
*§73.209. Public Information.*
*§73.210. Employment Practices.*
*§73.211. Administration and Compliance.*
*§73.212. Compliance by Contractors.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2011.

TRD-201100091
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: February 20, 2011
For further information, please call: (512) 438-3734

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## SUBCHAPTER D. DISSEMINATION OF INFORMATION AND TRAINING

**40 TAC §§73.300 - 73.302**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

*§73.300. Information Given Clients and Public.*

*§73.301. Information Given Agency Staff.*

*§73.302. Civil Rights Training.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2011.

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Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: February 20, 2011
For further information, please call: (512) 438-3734

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## SUBCHAPTER E. COMPLAINTS OF DISCRIMINATION

**40 TAC §§73.400 - 73.413**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

*§73.400. Establishment of Procedures.*

*§73.401. Filing Complaints.*

*§73.402. Procedure for Filing.*

*§73.403. Handling Complaints.*

*§73.404. Acknowledgment of Complaint.*

*§73.405. Records.*

*§73.406. Investigation Procedure.*

*§73.407. Regional Report of Investigation of Complaint of Discriminations.*

*§73.408. Regional Review of Complaints and Reports of Investigation.*

*§73.409. State Office Review Committee for Regional Complaints and Reports of Investigation.*

*§73.410. State Office Reports of Investigation of Complaint of Discrimination.*

*§73.411. State Office Review Committee for Programs Administered by State Office Civil Rights Department.*

*§73.412. Action Taken.*

*§73.413. Discrimination Complaint Closure.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2011.

TRD-201100093
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: February 20, 2011
For further information, please call: (512) 438-3734

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## SUBCHAPTER F. COMPLIANCE REVIEWS AND STANDARDS

**40 TAC §73.500, §73.501**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

*§73.500. Definition.*

*§73.501. Compliance Standards.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2011.

TRD-201100094
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: February 20, 2011
For further information, please call: (512) 438-3734

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## SUBCHAPTER G. CONTRACT COMPLIANCE

### 40 TAC §73.600

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

*§73.600. Assurances and Compliance Standards.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2011.

TRD-201100095
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: February 20, 2011
For further information, please call: (512) 438-3734

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# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

### CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

### SUBCHAPTER T. EXEMPTION FOR FIREFIGHTERS ENROLLED IN FIRE SCIENCE COURSES

**19 TAC §§22.518 - 22.520**

The Texas Higher Education Coordinating Board withdraws the proposed amendments to §§22.518 - 22.520 which appeared in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10411).

Filed with the Office of the Secretary of State on January 7, 2011.

TRD-201100048
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: January 7, 2011
For further information, please call: (512) 427-6114

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# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 353. MEDICAID MANAGED CARE

### SUBCHAPTER G. STAR+PLUS

**1 TAC §§353.601, 353.603, 353.605, 353.607**

The Texas Health and Human Services Commission (HHSC) adopts the amendments to §353.601, concerning General Provisions; §353.603, concerning Member Participation; §353.605, concerning Participating Providers; and new §353.607, concerning STAR+PLUS Handbook, without changes to the proposed text as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9578) and will not be republished.

Background and Justification

The STAR+PLUS program is a combination 1915(b) and 1915(c) Medicaid waiver administered by HHSC. Several program functions are delegated to other state entities or contractors including the Department of Aging and Disability Services, managed care organizations, and the Texas Medicaid & Healthcare Partnership.

The amendments to §§353.601, 353.603, and 353.605 are adopted to reflect the current program description and member participation guidelines and update the geographic locations where the program is available. New §353.607 is adopted to specify that the STAR+PLUS *Handbook* includes policies and procedures to be used by all health and human services agencies and their contractors and providers in the delivery of 1915(b) and/or 1915(c) STAR+PLUS waiver services to eligible members.

Comments

The 30-day comment period ended November 28, 2010. During this period, which included a public hearing on November 4, 2010, HHSC received one set of comments regarding the proposed amended and new rules.

Comment: The Texas Association for Home Care & Hospice (TAHC&H) provided comments supporting the changes to the existing rules. TAHC&H also requested that HHSC make certain changes to the STAR+PLUS *Handbook*.

HHSC Response: HHSC acknowledges the comment in support of the new and amended rules, and has not changed the rules. HHSC is making changes to the STAR+PLUS *Handbook* to clarify policy. These changes were published in the December 2010 update to the handbook.

Statutory Authority

The amendments and new rule are adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; and the Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 5, 2011.

TRD-201100030
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: February 1, 2011
Proposal publication date: October 29, 2010
For further information, please call: (512) 424-6900

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### CHAPTER 354. MEDICAID HEALTH SERVICES

### SUBCHAPTER A. PURCHASED HEALTH SERVICES

### DIVISION 34. OUT-OF-STATE SERVICES

**1 TAC §354.1440, §354.1442**

The Health and Human Service Commission (HHSC) adopts new §354.1440, concerning Medical Care or Services Provided to Medicaid Recipients Outside of Texas, and §354.1442, concerning Out-of-State Provider Eligibility, without changes to the proposed text as published in the October 22, 2010, issue of the *Texas Register* (35 TexReg 9452) and will not be republished.

Background and Justification

These new rules, which comprise new Division 34, are designed to strengthen the Medicaid rules regarding out-of-state providers. HHSC adopts §354.1440 related to medical care or services provided to eligible Texas Medicaid recipients while absent from Texas. Currently, this information is located in 1 TAC §355.8083; however, Chapter 355 covers Medicaid reimbursement rather than program policy. The repeal of §355.8083 is being adopted concurrently with these rules, and the information from §355.8083 will now be covered in the new rules.

In addition, HHSC adopts §354.1442 related to the criteria that must be met by a provider located outside the Texas border to enroll in the Texas Medicaid program and provide services to

Texas Medicaid recipients within the state of Texas or while they are absent from Texas. This rule is consistent with the current policy and procedures the state uses when determining if an out-of-state provider meets the criteria for enrollment in the Texas Medicaid program. The new rule refers to Chapter 355 regarding the reimbursement rates paid to out-of-state providers.

Comments

The 30-day comment period ended November 22, 2010. During this period, which included a public hearing on November 4, 2010, HHSC did not receive comments regarding the proposed rules.

Legal Authority

The new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 10, 2011.

TRD-201100068
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 30, 2011
Proposal publication date: October 22, 2010
For further information, please call: (512) 424-6900

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## CHAPTER 355. REIMBURSEMENT RATES
## SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

### 1 TAC §355.501

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §355.501, concerning Reimbursement Methodology for the Program for All-Inclusive Care for the Elderly (PACE), without changes to the proposed text as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9582) and will not be republished.

Background and Justification

The amended rule allows higher levels of managed care savings; adds language allowing for appropriate actuarial adjustments to be made for statistical outliers, small populations, programmatic changes, catastrophic events, or other economic changes; and allows other sources of data to be considered and used as deemed necessary.

Comments

The 30-day comment period ended November 29, 2010. During this period, HHSC did not receive any comments regarding the proposed amendment to the rule.

Legal Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 10, 2011.

TRD-201100070
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: March 1, 2011
Proposal publication date: October 29, 2010
For further information, please call: (512) 424-6900

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## SUBCHAPTER J. PURCHASED HEALTH SERVICES
## DIVISION 3. PHYSICIAN SERVICES

### 1 TAC §355.8043

The Texas Health and Human Services Commission (HHSC) adopts amended §355.8043, concerning Supplemental Payments for Physician Services, to add Texas A&M Health Science Center to the list of approved state entities that are eligible to receive Medicaid physician supplemental payments. The amended rule is adopted without changes to the proposed text as published in the November 12, 2010, issue of the *Texas Register* (35 TexReg 9969) and will not be republished.

Background and Justification

The adopted amendment allows HHSC to make Medicaid supplemental payments to employed physicians at the Texas A&M Health Science Center. The state funds required to draw down federal matching funds will be provided through intergovernmental transfers of public funds by the eligible governmental entities named in the rule.

HHSC will not make supplemental payments to any new hospital eligible under this rule amendment until the Medicaid state plan amendment has been approved by the Centers for Medicare and Medicaid Services.

Comments

The 30-day comment period ended on December 13, 2010. During this period, HHSC received no comments regarding the amended rule.

Statutory Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021, and Texas Government Code §531.021(a),

which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 6, 2011.

TRD-201100038
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 26, 2011
Proposal publication date: November 12, 2010
For further information, please call: (512) 424-6900

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## DIVISION 5. GENERAL ADMINISTRATION

### 1 TAC §355.8083

The Health and Human Service Commission (HHSC) adopts the repeal of §355.8083, concerning Medical Care or Services Provided Outside of Texas in Another State of the United States, without changes to the proposed text as published in the October 22, 2010, issue of the *Texas Register* (35 TexReg 9456) and will not be republished.

Background and Justification

HHSC adopts the repeal of §355.8083 and moves the program policy information related to out-of-state providers to new §354.1440 and §354.1442 in Chapter 354, Medicaid Health Services. HHSC is adopting the rules in Chapter 354 concurrently with this repeal. These changes are designed to strengthen the Medicaid rules regarding out-of-state providers.

Comments

The 30-day comment period ended November 22, 2010. During this period, which included a public hearing on November 4, 2010, HHSC did not receive comments regarding the rule.

Legal Authority

The repeal is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 10, 2011.

TRD-201100069
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 30, 2011
Proposal publication date: October 22, 2010
For further information, please call: (512) 424-6900

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## DIVISION 14. FEDERALLY QUALIFIED HEALTH CENTER SERVICES

### 1 TAC §355.8261

The Texas Health and Human Services Commission (HHSC) adopts amended §355.8261, concerning Federally Qualified Health Center Services Reimbursement, which updates the Medicaid reimbursement methodology for Federally Qualified Health Centers (FQHCs). The amended rule is adopted with changes to the proposed text as published in the November 12, 2010, issue of the *Texas Register* (35 TexReg 9972). The text of the rule will be republished.

Background and Justification

The amended rule updates the Medicaid reimbursement methodology for FQHCs by reducing the amount by which the Alternative Prospective Payment System (APPS) rate is annually increased from 1.5 percent to 0.5 percent to comply with a legislative directive. The Legislative Budget Board (LBB) and the Governor's Office informed HHSC in a letter dated May 17, 2010, of their revision to the mandated spending reduction plan for the 2010-11 biennium submitted by HHSC. The result of this revision is that HHSC will adjust the FQHC encounter rates each year by the Medicare Economic Index (MEI) plus an additional 0.5 percent, instead of the previous additional 1.5 percent, effective for rates on or after January 1, 2011.

Also, HHSC amended the rule to allow FQHCs to reselect either the APPS reimbursement methodology or the prospective payment system (PPS) reimbursement methodology when HHSC amends the APPS reimbursement methodology. This provides FQHCs that have selected the APPS reimbursement methodology the opportunity to change their selection to the PPS methodology if they oppose changes made to the APPS methodology.

HHSC has made two changes to the proposed version of the rule. First, the proposed version contained new language in subsection (b)(2) indicating that Medicare productivity screens would be used to determine reasonable costs. That proposed new language was removed in this adopted version in response to comments received. A productivity screen is a validity check used to ensure that professional staff working at the FQHC provide a reasonable amount of patient services. HHSC considered the comments submitted by the Texas Association of Community Health Centers, Inc. (TACHC) indicating that productivity screens are not reasonable as applied to FQHC Medicaid services.

Second, changes were made to the proposed rule language in subsection (b)(10)(A) in response to comments received and in a collaborative effort between HHSC and TACHC. HHSC added language in subsection (b)(10)(A) related to the determination of a "new FQHC" that would achieve the goal of developing a more appropriate initial interim base rate to reimburse a new FQHC. Additional detail is provided in the responses to comments below.

Comments

The 30-day comment period ended December 13, 2010. During this period, HHSC received comments regarding the amended rule from TACHC. A summary of the comments relating to the rule and HHSC's responses follows.

Comment: TACHC stated that the proposed amendment to subsection (b)(2) violates the federal requirement that an FQHC be reimbursed in an amount equal to 100% of the average of the costs of the center that are reasonable and related to the costs of furnishing Medicaid services. This comment was specifically directed at removal of language indicating that productivity screens are not used to determine reasonable costs.

Response: HHSC proposed the amendment to subsection (b)(2) in order to prevent reimbursing new FQHCs an interim rate that may be overstated due to a lack of productivity and efficiency, resulting in a sizable recoupment once the new FQHC's cost report is finalized and its final rate established. However, after considering TACHC's position, HHSC agrees to not amend the language of subsection (b)(2) and instead make other changes to the rule to address the issue of overstated interim rates that lead to recoupment of overpayments.

To that end, HHSC has amended subsection (b)(10)(A)(i) to indicate that the initial interim base rate for a new FQHC shall be set at the lesser of 80 percent of the anticipated reasonable costs or 80 percent of the average rate paid to FQHCs on January 1 of the calendar year during which the FQHC first applies as a new FQHC or for a change in scope, if applicable. Currently, HHSC sets the initial interim base rate for a new FQHC at 80 percent of the anticipated reasonable costs.

HHSC has also amended subsection (b)(10)(A)(ii) and (iii) to specify that As-Filed Medicare Cost Reports and Final Audited Medicare Cost Reports must reflect 12 months of continuous service that meets the requirements of subsection (b)(7)(B). In addition, HHSC has added new (b)(10)(A)(iv), which states that if a cost report described in subsection (b)(10)(A)(ii) or (iii) does not reflect 12 months of continuous service that meets the requirements of subsection (b)(7)(B), HHSC will prospectively establish the interim rate based on the lesser of the interim rate determined by the cost report or 80 percent of the average rate paid to FQHCs on January 1 of the calendar year during which the FQHC first applies as a new FQHC or for a change in scope if applicable, adjusted by applicable increases.

Comment: TACHC stated that the proposed amendment to reduce the annual increase in the APPS rate adjustment from the Medicare Economic Index (MEI) plus 1.5 percent to MEI plus 0.5 percent is unnecessary and will cause FQHCs undue administrative burden.

Response: The LBB and the Governor's Office informed HHSC in a letter dated May 17, 2010, of their revision to the mandated spending reduction plan for the 2010-11 biennium submitted by HHSC. The result of this revision is that HHSC will adjust the FQHC encounter rates each year by the Medicare Economic Index (MEI) plus an additional 0.5 percent, instead of the previous additional 1.5 percent, effective for rates on or after January 1, 2011. HHSC complied with this directive and updated the rule language to reflect this change. The rule language was not changed in response to the comment.

Comment: TACHC stated that the state cannot require FQHCs to select an APPS methodology with which they do not agree.

Response: HHSC was informed by the Centers for Medicare and Medicaid Services that if a state changed the reimbursement methodology for the APPS program, the state must allow the impacted FQHCs to re-select either the APPS or PPS methodology. HHSC amended the rule to ensure the FQHC providers are aware that, in order to continue to be reimbursed under the APPS reimbursement methodology after it has changed, the providers are required to reselect either the PPS or APPS methodology. By selecting the APPS, a provider agrees to the changes to that methodology. If the provider does not reselect the APPS reimbursement methodology, the provider will be reimbursed under the PPS reimbursement methodology. The rule language was not changed in response to the comment.

Comment: TACHC commented that the state should not make changes to the APPS reimbursement methodology before the Medicaid state plan amendment has been submitted or approved.

Response: This comment did not pertain to the proposed rule amendment, but rather to the upcoming amendment to the Medicaid State Plan. The rule language was not changed in response to the comment.

Statutory Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

*§355.8261. Federally Qualified Health Center Services Reimbursement.*

(a) Prospective Payment System (PPS) Methodology. Federally Qualified Health Centers (FQHCs) selecting the PPS methodology, in accordance with section 1902(bb) of the Social Security Act, as amended by the Benefits Improvement and Protection Act (BIPA) of 2000 (42 U.S.C. §1396a(bb)), effective for the FQHC's fiscal year that includes dates of service occurring January 1, 2001, and after, will be reimbursed a PPS per visit encounter rate for Medicaid covered services. FQHCs are reimbursed a prospective per visit encounter rate for a visit that meets the requirements of subsections (b)(12) and (13) of this section. The final base rate for each FQHC existing in 2000 was calculated based on one hundred percent (100%) of the average of the FQHC's reasonable costs for providing Medicaid covered services as determined from audited cost reports for the FQHC's 1999 and 2000 fiscal years. The final base rate was calculated by adding the total audited reimbursable costs as determined from the 1999 and 2000 cost reports and dividing by the total audited visits for these same two periods. The reimbursement methodologies described in subsection (b) of this section apply to the PPS methodology, except for the following:

(1) The effective rate for APPS described in subsection (b)(4) of this section does not apply to PPS. Increases in the final base rate or the effective rate for a PPS-reimbursed FQHC shall be the rate of change in the Medicare Economic Index (MEI) for primary care. If the increase in an FQHC's costs is greater than the MEI for PPS, an FQHC may request an adjustment of its effective rate as described in subsection (b)(6) of this section.

(2) State initiated reviews, described in subsection (b)(10)(D) of this section, are not applicable for providers who select the PPS methodology.

(b) Alternative Prospective Payment System (APPS) Methodology. FQHCs selecting the APPS methodology, in accordance with section 1902(bb) of the Social Security Act, as amended by the Benefits Improvement and Protection Act (BIPA) of 2000 (42 U.S.C. §1396a(bb)), effective for the FQHC's fiscal year that includes dates of service occurring January 1, 2001, and after, are reimbursed an APPS per visit encounter rate for Medicaid covered services at one hundred percent (100%) of reasonable costs. FQHCs are reimbursed a prospective per visit encounter rate for a visit that meets the requirements of paragraphs (12) and (13) of this subsection. The final base rate for each FQHC existing in 2000 was calculated based on one hundred percent (100%) of the average of the FQHC's reasonable costs for providing Medicaid covered services as determined from audited cost reports for the FQHC's 1999 and 2000 fiscal years. The final base rate was calculated by adding the total audited reimbursable costs as determined from the 1999 and 2000 cost reports and dividing by the total audited visits for these same two periods.

(1) Prior to the Health and Human Services Commission (HHSC) setting a final base rate pursuant to this section for each FQHC existing in 2000, each FQHC was reimbursed on the basis of an interim base rate. The interim base rate for each FQHC was calculated from the latest finalized cost report settlement, adjusted as provided for in paragraph (4) of this subsection. When HHSC determined a final base rate, interim payments were reconciled back to the beginning of the interim period. For FQHCs that agreed to the APPS methodology prior to August 31, 2010, adjustments were made to the FQHC's interim payments only if the interim payments were less than what would have occurred under the final base rate. Paragraph (10) of this subsection contains the interim and final base rate methodology for new FQHCs. The final base rate, as adjusted, applies prospectively from the date of the final approval. Payments made under the APPS methodology will be at least equal to the amount that would be paid under PPS.

(2) Reasonable costs, as used in setting the interim or final base rate or any subsequent effective rate, is defined as those costs that are allowable under Medicare Cost Principles, as outlined in 42 C.F.R. part 413, with no productivity screens and no per visit payment limit. Administrative costs will be limited to thirty percent (30%) of total costs in determining reasonable costs. Reasonable costs do not include unallowable costs.

(3) Unallowable costs are expenses that are incurred by an FQHC and that are not directly or indirectly related to the provision of covered services, according to applicable laws, rules, and standards. An FQHC may expend funds on unallowable cost items, but those costs must not be included in the cost report/survey, and they are not used in calculating an interim or final base rate determination. Unallowable costs include, but are not necessarily limited to, the following:

(A) compensation in the form of salaries, benefits, or any form of compensation given to individuals who are not directly or indirectly related to the provision of covered services;

(B) personal expenses not directly related to the provision of covered services;

(C) management fees or indirect costs that are not derived from the actual cost of materials, supplies, or services necessary for the delivery of covered services, unless the operational need and cost effectiveness can be demonstrated;

(D) advertising expenses other than those for advertising in the telephone directory yellow pages, for employee or contract labor recruitment, and for meeting any statutory or regulatory requirement;

(E) business expenses not directly related to the provision of covered services. For example, expenses associated with the sale or purchase of a business or expenses associated with the sale or purchase of investments;

(F) political contributions;

(G) depreciation and amortization of unallowable costs, including amounts in excess of those resulting from the straight line depreciation method; capitalized lease expenses, less any maintenance expenses, in excess of the actual lease payment; and goodwill or any excess above the actual value of the physical assets at the time of purchase. Regarding the purchase of a business, the depreciable basis will be the lesser of the historical but not depreciated cost to the previous owner or the purchase price of the assets. Any depreciation in excess of this amount is unallowable;

(H) trade discounts and allowances of all types, including returns, allowances, and refunds, received on purchases of goods or services. These are reductions of costs to which they relate and thus, by reference, are unallowable;

(I) donated facilities, materials, supplies, and services including the values assigned to the services of unpaid workers and volunteers whether directly or indirectly related to covered services, except as permitted in 42 C.F.R. part 413;

(J) dues to all types of political and social organizations and to professional associations whose functions and purpose are not reasonably related to the development and operation of patient care facilities and programs or the rendering of patient care services;

(K) entertainment expenses, except those incurred for entertainment provided to the staff of the FQHC as an employee benefit. An example of entertainment expenses is lunch during the provision of continuing medical education on-site;

(L) board of director's fees, including travel costs and meals provided for directors;

(M) fines and penalties for violations of statutes, regulations, and ordinances of all types;

(N) fund raising and promotional expenses, except as noted in subparagraph (D) of this paragraph;

(O) interest expenses on loans pertaining to unallowable items, such as investments. Also the interest expense on that portion of interest paid that is reduced or offset by interest income;

(P) insurance premiums pertaining to items of unallowable costs;

(Q) any accrued expenses that are not a legal obligation of the provider or are not clearly enumerated as to dollar amount;

(R) mileage expense exceeding the current reimbursement rate set by the federal government for its employee travel;

(S) cost for goods or services that are purchased from a related party and that exceed the original cost to the related party;

(T) out-of-state travel expenses not related to the provision of covered services, except out-of-state travel expenses for training courses that increase the quality of medical care and/or the operating efficiency of the FQHC;

(U) over-funding contributions to self-insurance funds that do not represent payments based on current liabilities;

(V) overhead costs beyond the thirty percent (30%) limitation established by HHSC.

(4) The effective rate for APPS - The effective rate is the rate paid to the FQHC for the FQHC's fiscal year. The effective rate shall be updated by the rate of change in the MEI plus (0.5) percent for each of the FQHC's fiscal years since the setting of its final base rate. If the increase in an FQHC's costs is greater than the MEI plus (0.5) percent for APPS, an FQHC may request an adjustment of its effective rate as described in paragraph (6) of this subsection. The effective rate shall be calculated at the start of each FQHC's fiscal year and shall be applied prospectively for that fiscal year. The effective rate for PPS is described in subsection (a)(1) of this section.

(5) PPS and APPS reimbursement methodology selection is determined as follows:

(A) Each new in-state FQHC will receive a letter from HHSC upon enrollment as a new provider along with the Federally Qualified Health Centers (FQHC) Prospective Payment System Form. This form must be signed by an authorized representative and returned to HHSC within thirty (30) days of the enrollment letter date. The form must indicate the selection as either the PPS or APPS reimbursement methodology. If HHSC does not receive the form within the specified time requirement, HHSC will select the PPS reimbursement methodology for this provider. For a provider that fails to return the form selecting the APPS reimbursement methodology, the provider may submit a written request along with the Federally Qualified Health Centers (FQHC) Prospective Payment System Form selecting the APPS reimbursement methodology. Upon approval by HHSC, the new selection will be effective the first day of the provider's next fiscal year.

(B) Each out-of-state FQHCs will receive the PPS reimbursement methodology. Out-of-state FQHCs may not select the APPS reimbursement methodology. HHSC will compute an effective rate based on reasonable costs provided by the FQHC on its most recent Medicare cost report, pursuant to paragraph (8)(A) and (B) of this subsection. The effective rate will reflect the rate that would have been calculated for an in-state FQHC based on the approved scope of services that an in-state FQHC could provide in Texas.

(C) When HHSC makes a change to the PPS or APPS reimbursement methodology, HHSC may require FQHCs to reselect the PPS or APPS reimbursement methodology, in accordance with the requirements of subparagraph (A) of this paragraph.

(6) A change of the effective rate is determined as follows:

(A) An adjustment, as described in paragraph (10)(C) of this subsection, will be made to the effective rate if the FQHC can show that it is operating in an efficient manner as defined in paragraph (7)(B) of this subsection, or show that the adjustment is warranted due to a change in scope as defined in paragraph (7)(A) of this subsection.

(B) HHSC also may adjust the effective rate of an FQHC on its own initiative, in accordance with paragraph (10)(D) of this subsection, if it is determined that a change of scope has occurred and an adjustment to the effective rate as defined in paragraph (7) of this subsection is warranted based on the audit of the cost report described in paragraph (8)(C) of this subsection.

(7) Any request to adjust an effective rate must be accompanied by documentation showing that the FQHC is operating in an efficient manner or that it has had a change in scope. A change in scope provided by an FQHC includes the addition or deletion of a service or a change in the magnitude, intensity or character of services currently offered by an FQHC or one of the FQHC's sites.

(A) A change in scope includes:

*(i)* an increase in service intensity attributable to changes in the types of patients served, including but not limited to, patients with HIV/AIDS, the homeless, the elderly, migrants, those with other chronic diseases or special populations;

*(ii)* any changes in services or provider mix provided by an FQHC or one of its sites;

*(iii)* changes in operating costs that have occurred during the fiscal year and which are attributable to capital expenditures, including new service facilities or regulatory compliance;

*(iv)* changes in operating costs attributable to changes in technology or medical practices at the FQHC;

*(v)* indirect medical education adjustments and a direct graduate medical education payment that reflects the costs of providing teaching services to interns and residents; or

*(vi)* any changes in scope approved by the Health Resources and Service Administration (HRSA).

(B) Operating in an efficient manner includes:

*(i)* showing that the FQHC has implemented an outcome-based delivery system that includes prevention and chronic disease management. Prevention includes, but is not limited to, programs such as immunizations and medical screens. Disease Management must include, but not be limited to, programs such as those for diabetes, cardiovascular conditions, and asthma that can demonstrate an overall improvement in patient outcome;

*(ii)* paying employees' salaries that do not exceed the rates of payment for similar positions in the area, taking into account experience and training as determined by the Texas Workforce Commission;

*(iii)* providing fringe benefits to its employees that do not exceed fifteen percent (15%) of the FQHC's total costs;

*(iv)* implementing cost saving measures for its pharmacy and medical supplies expenditures by engaging in group purchasing; and

*(v)* employing the Medicare concept of a "prudent buyer" in purchasing its contracted medical services.

(8) Cost report forms and worksheets are required as follows:

(A) As-Filed Medicare Cost Report. The As-Filed Medicare Cost Report includes:

*(i)* CMS form 222-92 Independent Rural Health Clinic/Freestanding and Federally Qualified Health Center Worksheet, including the HCFA 339 Form.

*(I)* Worksheet S part 1 - Statistical Data;

*(II)* Worksheet S part 2 - Certification By Officer or Administrator

*(III)* Worksheet S part 3 - Statistical Data for Clinics Filing Under Consolidated Cost Reporting;

*(IV)* Worksheet A page 1 - Reclassification and Adjustment of Trial Balance of Expenses;

*(V)* Worksheet A page 2 - Reclassification and Adjustment of Trial Balance of Expenses;

*(VI)* Worksheet A-1 - Reclassifications;

*(VII)* Worksheet A-2 - Adjustments to Expenses;

*(VIII)* Worksheet A-2-1, Parts I to III - Statement of Cost of Services from Related Organizations;

*(IX)* Worksheet B part I and II - Visits and Overhead Cost for RHC/FQHC Services; and

*(X)* Worksheet C part I and II - Determination of Medicare Reimbursement.

*(ii)* Texas Medicaid Supplemental Worksheets.

*(I)* Determination of FQHC Cost Based Rate;

*(II)* Exhibit 1 - Determination of FQHC Medicaid Reimbursable Cost - Rate Worksheet;

*(III)* Exhibit 2 - Visit Reconciliation - Employed Providers; and

*(IV)* Exhibit 3 - Visit Reconciliation - Contract Service Providers.

*(iii)* Trial Balance with account titles. If the provider's Trial Balance has only account numbers, a Chart of Accounts will need to accompany the Trial Balance.

*(iv)* A mapping of the Trial Balance that shows the tracing of each Trial Balance account to a line and column on Worksheet A pages 1 and 2.

*(v)* Documentation supporting the provider's reclassification and adjustment entries.

*(vi)* A Schedule of Depreciation of depreciable assets.

*(vii)* A listing of all satellites, if applicable.

*(viii)* Federal Grant Award notices or changes in scope approved by HRSA.

*(ix)* All items must be complete and accurate.

(B) Final Audited Medicare Cost Report. In-state providers must file the final audited cost report received from Medicare, as required in paragraph (9) of this subsection. The final audited Medicare cost report includes:

*(i)* A copy of the final audited CMS form 222-92 Independent Rural Health Clinic/Freestanding and Federally Qualified Health Center Worksheets, including the HCFA 339 Form filed with Medicare.

*(ii)* Texas Medicaid Supplemental Worksheets.

*(I)* Determination of FQHC Cost Based Rate;

*(II)* Exhibit 1 - Determination of FQHC Medicaid Reimbursable Cost - Rate Worksheet;

*(III)* Exhibit 2 - Visit Reconciliation - Employed Providers; and

*(IV)* Exhibit 3 - Visit Reconciliation - Contract Service Providers.

*(iii)* All items must be complete and accurate.

(C) Change of Effective Rate Cost Report. The change of effective rate cost report is used by in-state or out-of-state FQHCs that are requesting a change in their effective rate due to a change in scope or operating in an efficient manner. The cost report must contain at least six (6) months of financial information. The documents needed for in-state and out-of-state providers filing a change of effective rate cost report are the same as required for the as-filed cost report in paragraph (8)(A) of this subsection.

(D) Projected Cost Report. The projected cost report is used by in-state or out-of-state FQHCs that are requesting an initial interim rate. The cost report must contain at least twelve (12) months of projected financial information. The required documents are the same as required for the as-filed cost report in paragraph (8)(A) of this subsection, except that the information contained in clauses (iii), (iv) and (v) are not required.

(E) Low Medicare Utilization Cost Report. The low Medicare utilization cost report is used by in-state and out-of-state providers to meet the annual filing requirements for providers not required to file a full cost report with Medicare. A provider filing the Low Medicare Utilization cost report must complete and submit all required forms and supporting documentation described in paragraph (8)(A) of this subsection for all rate determination processes described in paragraph (10) of this subsection.

(F) If a provider fails to submit a required cost report, HHSC or its designee may delay or withhold vendor payment to the provider until a complete cost report has been received and accepted by HHSC or its designee.

(9) Cost Report Filing Requirement. Each FQHC must submit a copy of its Final Audited Medicare Cost Report, as described in paragraph (8)(B) of this subsection, to HHSC or its designee within thirty (30) days of receipt of the report from Medicare. An FQHC filing a Low Utilization Cost Report with Medicare may comply with this subsection by filing a copy of such cost report with HHSC annually, within thirty (30) days of filing the report with Medicare.

(10) FQHC rate determination process.

(A) New FQHC.

*(i)* A new FQHC must file a projected cost report, pursuant to paragraph (8)(D) of this subsection, within 90 days of their designation as an FQHC to establish an initial interim base rate. The cost report must contain the FQHC's reasonable costs anticipated to be incurred during the FQHC's initial fiscal year. The initial interim base rate for a new FQHC shall be set at the lesser of eighty percent (80%) of the anticipated reasonable costs or eighty percent (80%) of the average rate paid to FQHCs on January 1 of the calendar year during which the FQHC first applies as a new FQHC or for a change in scope, if applicable.

*(ii)* Each new FQHC must submit to HHSC or its designee an As-Filed Medicare Cost Report, pursuant to paragraph (8)(A) of this subsection, within five (5) calendar months after the end of the FQHC's first full fiscal year. HHSC will determine an updated interim base rate based on one hundred percent (100%) of the reasonable costs contained in the As-Filed Medicare Cost Report. An As-Filed Medicare Cost Report must reflect twelve (12) months of continuous service that meets the requirements of paragraph (7)(B) of this subsection. Interim rates will be adjusted prospectively until the Final Audited Medicare Cost Report reflecting twelve (12) months of continuous service is processed. HHSC will, within eleven (11) months of receipt of the As-Filed Medicare Cost Report reflecting twelve (12) months of continuous service determine the updated interim base rate.

*(iii)* Each new FQHC must submit to HHSC or its designee a Final Audited Medicare Cost Report, pursuant to paragraph (9) of this subsection. The Final Audited Medicare Cost Report settlement, reflecting twelve (12) months of continuous service, must be completed within eleven (11) months of receipt of a cost report. The rate established shall be the final base rate. HHSC will reconcile payments back to the beginning of the interim period applying the final base rate. If the final base rate is greater than the interim base rate, HHSC will compute and pay the FQHC a settlement payment that represents the difference in rates for the services provided during the interim period. If the final base rate is less than the interim base rate,

HHSC will compute and recoup from the FQHC any overpayment resulting from the difference in rates for the services provided during the interim period. The final base rate is adjusted in accordance with paragraph (4) of this subsection to determine the effective rate.

*(iv)* If a new FQHC cost report described in clause (ii) or (iii) of this subparagraph does not meet the requirement of reflecting twelve (12) months of continuous service that meets the requirements of paragraph (7)(B) of this subsection, HHSC will prospectively establish the interim rate based on the lesser of the interim rate determined by the cost report or eighty percent (80%) of the average rate paid to FQHCs on January 1 of the calendar year during which the FQHC first applies as a new FQHC or for a change in scope, if applicable, adjusted by applicable increases.

(B) Change of Ownership. If an existing FQHC facility changes ownership, the new owner must notify HHSC of the ownership change within ten (10) calendar days of the change.

*(i)* If the new owner of an FQHC facility owns no other FQHC facility in Texas, HHSC will treat the FQHC facility as a new FQHC. HHSC will set an initial interim base rate equal to one hundred percent (100%) of the previous owner's effective rate, and will then follow the procedures under subparagraph (A)(ii) and (iii) of this paragraph.

*(ii)* If the new owner of an FQHC facility owns one or more FQHC facilities in Texas and will include the new facility on the Medicare cost report of another FQHC facility, then HHSC will apply the rate assigned to the other FQHC.

*(iii)* If the new owner of an FQHC facility owns one or more FQHC facilities in Texas, but will not include the new facility on the Medicare cost report of another FQHC facility, then HHSC will determine a rate for the facility in accordance with clause (i) of this subparagraph.

*(iv)* If the new owner is ultimately not allowed by Medicare to include its new FQHC facility on the Medicare cost report of the other FQHC facility that it owns, then HHSC will determine a rate for the facility in accordance with subparagraph (A) of this paragraph.

(C) Request for Change of Effective Rate.

*(i)* An FQHC that requests an adjustment of its effective rate due to a change in scope or operating in an efficient manner must file a Change of Effective Rate Cost Report described in paragraph (8)(C) of this subsection. The FQHC must include the necessary documentation to support a claim that the FQHC has undergone a change in scope or is operating in an efficient manner pursuant to paragraph (7) of this subsection. A cost report filed to request an adjustment in the effective rate may be filed at any time during an FQHC's fiscal year, but no later than five (5) calendar months after the end of the FQHC's fiscal year. All requests for adjustment in the FQHC's effective rate must include at least six (6) months of financial data. Within sixty (60) days of receiving the Change of Effective Rate Cost Report described in paragraph (8)(C) of this subsection, HHSC or its designee will make a determination regarding a new interim base rate.

*(ii)* If HHSC determines through the review of the information provided in clause (i) of this subparagraph that an adjustment to the effective rate is warranted, HHSC will determine an interim base rate based on one hundred percent (100%) of the reasonable costs contained in the Change of Effective Rate Cost Report. Interim payments will be adjusted prospectively until the final audited cost report is processed.

*(iii)* The FQHC must submit to HHSC or its designee an As-Filed Medicare Cost Report, described in paragraph (8)(A) of this subsection, within five (5) calendar months after the end of the FQHC's fiscal year. HHSC and the FQHC will then follow the procedures under subparagraph (A)(ii) and (iii) of this paragraph.

(D) State Initiated Review.

*(i)* For an in-state FQHC that has chosen the APPS methodology, HHSC may prospectively reduce the FQHC's effective rate to reflect one hundred percent (100%) of its reasonable costs or the PPS effective rate, whichever is greater. After reviewing the Final Audited Medicare Cost Report described in paragraph (8)(B) of this subsection, HHSC will determine if an in-state FQHC is being reimbursed more than one hundred percent (100%) of its reasonable cost or the PPS effective rate, whichever is greater, through the following steps:

*(I)* Determine the reasonable cost per encounter from the Final Audited Medicare Cost Report;

*(II)* Determine the effective PPS rate per encounter as would have been applied to the FQHC if the FQHC had chosen PPS as described in subsection (a) of this section for the same time period corresponding to the FQHC's Final Audited Medicare Cost Report described in subclause (I) of this clause;

*(III)* Select the greater of subclause (I) or (II) of this clause;

*(IV)* If the result in subclause (III) of this clause is less than the APPS effective rate for this period, HHSC will set the result in subclause (III) of this clause as the new final base rate for this period;

*(V)* The prospective rate described in clause (iii) of this subparagraph will be determined by adjusting the new final base rate from subclause (IV) of this clause in accordance with paragraph (4) of this subsection to determine the effective rate.

*(VI)* The new final base rate from subclause (IV) of this clause and subsequent effective rates will not apply to claims for services provided prior to the implementation date described in clause (iii) of this subparagraph.

*(ii)* State initiated reviews will be based on a determined twelve (12) month time period and the most recent cost data received in accordance with paragraph (9) of this subsection. For any provider filing a Low Utilization Cost Report with Medicare in accordance with paragraph (9) of this subsection, upon request by HHSC, the provider must complete and submit the forms and worksheets described in paragraph (8)(A) of this subsection for the fiscal years ending within the determined twelve (12) month time period, even if the cost report was not required to be filed by Medicare.

*(iii)* HHSC will apply the state initiated rate reduction prospectively beginning on the first day of the month following forty-five (45) days after the date of the Final Base Rate Notification letter. The final base rate is adjusted in accordance with paragraph (4) of this subsection to determine the effective rate.

*(iv)* HHSC will not increase the effective rate for an FQHC based on the outcome of a state-initiated cost report audit. It is the responsibility of the FQHC to request HHSC to adjust the effective rate if the FQHC can show that it is operating in an efficient manner as defined in paragraph (7)(B) of this subsection, or can show a change in scope as defined in paragraph (7)(A) of this subsection.

*(v)* For PPS the state initiated reviews is not applicable, as described in subsection (a)(2) of this section.

(E) Final Base Rate Notification Letter. HHSC will provide to an FQHC written notification of any determined final base rate forty-five (45) days prior to implementation of the final base rate. The effective date of the final base rate is determined by the applicable FQHC Rate Determination Process described in subparagraph (A) - (D) of this paragraph.

(F) Request for Review of Final Base Rate. The FQHC may submit a written request for review of the final base rate within 30 days of the date of the Final Base Rate Notification Letter in the circumstances described in clauses (i) - (iii) of this subparagraph.

*(i)* The FQHC believes that HHSC made a mathematical error or data entry error in calculating the FQHC's reasonable cost. The request for review must include the supporting documentation of the perceived mathematical error or data entry error in calculating the final base rate. HHSC will evaluate the request for review and the merit of the supporting documentation. If HHSC determines the request for review merits a change in the final base rate, HHSC will adjust the final base rate to the effective date of the Final Base Rate Notification Letter.

*(ii)* The FQHC believes that the FQHC made an error in reporting its cost or data in the Texas Medicaid Supplemental Worksheets described in paragraph (8)(A) of this subsection that would result in a different calculation of the FQHC's reasonable cost. The request for review must include the corrected Texas Medicaid Supplemental Worksheets and supporting documentation of the correction of error in reporting of cost or data. If HHSC determines the request for review merits a change in the final base rate, HHSC may adjust the final base rate to the effective date of the Final Base Rate Notification Letter.

*(iii)* The FQHC believes that the FQHC made an error in reporting its cost or data in the Final Audited Medicare Cost Report described in paragraph (8)(B) of this subsection that would result in a different calculation of the FQHC's reasonable cost. The request for review must include the correspondence submitted to the Medicare fiscal intermediary to amend the Medicare cost report. HHSC will consider the request for review upon receipt of the provider amended Final Audited Medicare Cost Report and supporting documentation of the correction of error in reporting of cost or data. If HHSC determines the request for review merits a change in the final base rate, HHSC may adjust the final base rate to the effective date of the Final Base Rate Notification Letter.

*(iv)* HHSC will send the FQHC written notification of the results of its request for review.

*(v)* If the FQHC disagrees with the results of the review in clause (iv) of this subparagraph, the FQHC may formally appeal in accordance with §§357.481 - 357.490 of this title (relating to Hearings Under the Administrative Procedure Act).

(11) In the event that the total amount paid to an FQHC by a managed care organization is less than the amount the FQHC would receive under PPS or APPS, whichever is applicable, the state will reimburse the difference on a quarterly basis. The state's quarterly supplemental payment obligation will be determined by subtracting the baseline payment under the contract for services being provided from the effective rate without regard to the effects of financial incentives that are linked to utilization outcomes, reductions in patient costs, or bonuses.

(12) A visit is a face-to-face encounter between an FQHC patient and a physician, physician assistant, nurse practitioner, certified nurse-midwife, visiting nurse, a qualified clinical psychologist, clinical social worker, other health professional for mental health services, dentist, dental hygienist, or an optometrist. Encounters with more than one health professional and multiple encounters with the same health professional that take place on the same day and at a single location constitute a single visit, except where one of the following conditions exist:

(A) after the first encounter, the patient suffers illness or injury requiring additional diagnosis or treatment; or

(B) the FQHC patient has a medical visit and an "other" health visit, as defined in paragraph (13) of this subsection.

(13) A medical visit is a face-to-face encounter between an FQHC patient and a physician, physician assistant, nurse practitioner, certified nurse midwife, or visiting nurse. An "other" health visit includes, but is not limited to, a face-to-face encounter between an FQHC patient and a qualified clinical psychologist, clinical social worker, other health professional for mental health services, a dentist, a dental hygienist, an optometrist, or a Texas Health Steps Medical Screen.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 6, 2011.

TRD-201100037
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 26, 2011
Proposal publication date: November 12, 2010
For further information, please call: (512) 424-6900

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## DIVISION 28. PHARMACY SERVICES: REIMBURSEMENT

### 1 TAC §355.8551

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §355.8551, concerning Reimbursement Methodology for Pharmacy Health Services, related to the Medicaid pharmacy dispensing fee. The amendment is adopted without changes to the proposed text as published in the November 12, 2010, issue of the *Texas Register* (35 TexReg 9973) and will not be republished.

Background and Justification

HHSC submitted a spending reduction plan in response to a letter dated January 15, 2010, from the Governor, Lieutenant Governor, and Speaker of the House. The letter requested the agency to submit a spending reduction proposal for the 2010-2011 biennium. The Legislative Budget Board and the Governor's Office informed HHSC in a letter dated May 17, 2010, of their revisions to the spending reduction plan for the 2010-11 biennium submitted by HHSC.

One result of the revised spending reduction plan is that the fixed and variable components of the Medicaid pharmacy dispensing fee reimbursement are reduced by one percent effective September 1, 2010. The specific amounts of reimbursement for those components are set out in §355.8551, and therefore the rule was amended to reflect the one-percent reduction.

HHSC also adopts the language in new subsection (a)(5)(A) regarding the delivery incentive component of the dispensing fee formula. This is done as a consequence of a court decision in *Long Term Care Pharm. Alliance, Omnicare, Inc., and Pharmerica, Inc. v. HHSC,* 249 S.W.3d. 471 (Tex. Ct. App., 11th Dist. 2007).

In addition, some terms used in the dispensing fee formula were revised to make them more descriptive. Other nonsubstantive changes were made throughout the rule for clarity.

Comments

The 30-day comment period ended December 13, 2010. During this period, HHSC did not receive any comments regarding the proposed amendments to the rule.

Statutory Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 6, 2011.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: November 12, 2010
For further information, please call: (512) 424-6900

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## CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM
## SUBCHAPTER C. ENROLLMENT, DISENROLLMENT, AND RENEWAL OF MEMBERSHIP
## DIVISION 2. COST-SHARING REQUIREMENTS

### 1 TAC §370.325

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §370.325, concerning the annual aggregate cost-sharing cap in the Children's Health Insurance Program (CHIP). The amended rule is adopted without changes to the proposed text as published in the October 22, 2010, issue of the *Texas Register* (35 TexReg 9457) and will not be republished.

Background and Justification

The Social Security Act and federal regulations prohibit states from imposing CHIP cost-sharing charges that, in the aggregate, exceed five percent of a family's total income for the length of a child's eligibility period (see §2103(e)(3) of the Social Security Act and 42 C.F.R. §457.560). The CHIP aggregate annual cost-sharing cap is the maximum amount a CHIP family may pay out of pocket for the program during the 12-month enrollment period. Once a family reaches its cost-sharing cap, the family is no longer required to pay any cost-sharing for the remainder of the enrollment period. Cost-sharing in CHIP includes an annual enrollment fee and co-payments for certain CHIP services.

The adopted rule removes the annual aggregate CHIP cost-sharing cap from the Texas Administrative Code and clarifies that it is established in the Texas CHIP State Plan, as approved by the Centers for Medicare and Medicaid Services (CMS). This change does not prevent members from having access to or being informed about changes in their aggregate cost-sharing cap because HHSC provides public notice in the *Texas Register* each time the agency proposes changes to the Texas CHIP State Plan.

Comments

The 30-day comment period ended November 22, 2010. During this period, which included a public hearing on November 3, 2010, HHSC did not receive comments regarding the amended rule.

Statutory Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority and Texas Health and Safety Code §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The amendment affects Texas Health and Safety Code, Chapter 62, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 10, 2011.

TRD-201100067
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 30, 2011
Proposal publication date: October 22, 2010
For further information, please call: (512) 424-6900

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# TITLE 10. COMMUNITY DEVELOPMENT
## PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
## CHAPTER 53. HOME PROGRAM RULE
## SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, AND REVIEW AND AWARD PROCEDURES

**10 TAC §53.26**

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 53, Subchapter B, §53.26, concerning Reservation System Participant (RSP) Agreements, without changes to the proposed text as published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10374) and will not be republished.

These amendments are adopted in order to temporarily suspend match requirements for the Homeowner Rehabilitation Assistance and Homebuyer Assistance Program Activities, update references to the Qualified Action Plan, and clarify "fixed" versus "floating" units requirement for Multifamily Developments.

The Department accepted comments to the proposed amendments in writing and by email through December 9, 2010, with comments received from (1) Delia Chavez, Executive Director, El Paso Collaborative and (2) Joann Guillen, El Paso Collaborative.

REASONED RESPONSE TO PUBLIC COMMENT AND STAFF RECOMMENDATIONS ON THE ADOPTION OF 10 TAC CHAPTER 53, SUBCHAPTER B, §53.26.

COMMENT: Commenters (1) and (2) supported the temporary match suspension.

STAFF RESPONSE: No change was recommended.

The Board approved the final order adopting the amended section on December 17, 2010.

The amendments are adopted pursuant to the authority of Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 10, 2011.

TRD-201100077
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 30, 2011
Proposal publication date: November 26, 2010
For further information, please call: (512) 475-3916

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## SUBCHAPTER C. HOMEOWNER REHABILITATION ASSISTANCE (HRA) PROGRAM ACTIVITY

**10 TAC §53.30**

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 53, Subchapter C, §53.30, concerning Homeowner Rehabilitation Assistance (HRA) Program Threshold and Selection Criteria, without changes to the proposed text as published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10374) and will not be republished.

These amendments are adopted in order to temporarily suspend match requirements for the Homeowner Rehabilitation Assistance and Homebuyer Assistance Program Activities, update references to the Qualified Action Plan, and clarify "fixed" versus "floating" units requirement for Multifamily Developments.

The Department accepted comments to the proposed amendments in writing and by email through December 9, 2010, with comments received from (1) Delia Chavez, Executive Director, El Paso Collaborative and (2) Joann Guillen, El Paso Collaborative.

REASONED RESPONSE TO PUBLIC COMMENT AND STAFF RECOMMENDATIONS ON THE ADOPTION OF 10 TAC CHAPTER 53, SUBCHAPTER C, §53.30.

COMMENT: Commenters (1) and (2) supported the temporary match suspension.

STAFF RESPONSE: No change was recommended.

The Board approved the final order adopting the amended section on December 17, 2010.

The amendments are adopted pursuant to the authority of Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 10, 2011.

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Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 30, 2011
Proposal publication date: November 26, 2010
For further information, please call: (512) 475-3916

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## SUBCHAPTER D. HOMEBUYER ASSISTANCE (HBA) PROGRAM ACTIVITY

**10 TAC §53.40**

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 53, Subchapter D, §53.40, concerning Homebuyer Assistance (HBA) Threshold and Selection Criteria, without changes to the proposed text as published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10375) and will not be republished.

These amendments are adopted in order to temporarily suspend match requirements for the Homeowner Rehabilitation Assistance and Homebuyer Assistance Program Activities, update references to the Qualified Action Plan, and clarify "fixed" versus "floating" units requirement for Multifamily Developments.

The Department accepted comments to the proposed amendments in writing and by email, through December 9, 2010, with comments received from (1) Delia Chavez, Executive Director, El Paso Collaborative and (2) Joann Guillen, El Paso Collaborative.

REASONED RESPONSE TO PUBLIC COMMENT AND STAFF RECOMMENDATIONS ON THE ADOPTION OF 10 TAC CHAPTER 53, SUBCHAPTER D, §53.40.

§53.40(1)

COMMENT: Commenters (1) and (2) supported the temporary match suspension.

STAFF RESPONSE: No change was recommended.

The Board approved the final order adopting the amended section on December 17, 2010.

The amendments are adopted pursuant to the authority of Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 10, 2011.

TRD-201100079
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 30, 2011
Proposal publication date: November 26, 2010
For further information, please call: (512) 475-3916

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## SUBCHAPTER H. MULTIFAMILY (RENTAL HOUSING) DEVELOPMENT (MFD) PROGRAM ACTIVITY

### 10 TAC §53.80, §53.81

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 53, Subchapter H, §53.80 and §53.81, concerning Multifamily (Rental Housing) Development (MFD) Program Activity, without changes to the proposed text as published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10376) and will not be republished.

These amendments are adopted in order to temporarily suspend match requirements for the Homeowner Rehabilitation Assistance and Homebuyer Assistance Program Activities, update references to the Qualified Action Plan, and clarify "fixed" versus "floating" units requirement for Multifamily Developments.

The Department accepted comments to the proposed amendments in writing and by email through December 9, 2010. No comments were received.

The Board approved the final order adopting the amended sections on December 17, 2010.

The amendments are adopted pursuant to the authority of Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 10, 2011.

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Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: November 26, 2010
For further information, please call: (512) 475-3916

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# TITLE 22. EXAMINING BOARDS

## PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

## CHAPTER 781. SOCIAL WORKER LICENSURE

The Texas State Board of Social Worker Examiners (board) adopts the repeal of §§781.101, 781.102, 781.201 - 781.217, 781.301 - 781.318, 781.401 - 781.419, 781.501 - 781.517, 781.601 - 781.608, 781.610, 781.701 - 781.704, and 781.801 - 781.807; and new §§781.101, 781.102, 781.201 - 781.219, 781.301 - 781.317, 781.401 - 781.418, 781.501 - 781.517, 781.601 - 781.610, 781.701 - 781.704, and 781.801 - 781.808, concerning the licensing and regulation of social workers. The new §§781.102, 781.201 - 781.204, 781.210, 781.211, 781.216, 781.315, 781.401, 781.402, 781.404, 781.511, 781.602, 781.603, 781.806, and 781.808 are adopted with changes to the proposed text as published in the August 6, 2010, issue of the *Texas Register* (35 TexReg 6749). The repeal of §§781.101, 781.102, 781.201 - 781.217, 781.301 - 781.318, 781.401 - 781.419, 781.501 - 781.517, 781.601 - 781.608, 781.610, 781.701 - 781.704, 781.801 - 781.807 and new §§781.101, 781.205 - 781.209, 781.212 - 781.215, 781.217 - 781.219, 781.301 - 781.314, 781.316, 781.317, 781.403, 781.405 - 781.418, 781.501 - 781.510, 781.512 - 781.517, 781.601, 781.604 - 781.610, 781.701 - 781.704, 781.801 - 781.805, and 781.807 are adopted without changes and, therefore, the sections will not be republished.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 781.101, 781.102, 781.201 - 781.217, 781.301 - 781.318, 781.401 - 781.419, 781.501 - 781.517, 781.601 - 781.608, 781.610, 781.701 - 781.704, and 781.801 - 781.807 have been reviewed and the board has determined that the reasons for adopting the sections continue to exist in that rules concerning the licensing and regulation of social workers are still needed; however, the rules will be repealed and adopted as new rules as described in this preamble. The adopted repeals and new sections are the result of the comprehensive rule review undertaken by the board and the board's staff.

In general, each section was reviewed, repealed, and readopted in order to ensure appropriate subchapter, section, and para-

graph organization; to ensure clarity; to improve spelling, grammar, and punctuation; to ensure that the rules reflect current legal and policy considerations; to ensure accuracy of legal citations; to eliminate unnecessary catch-titles; to delete repetitive, obsolete, unenforceable, or unnecessary language; to improve draftsmanship; and to make the rules more accessible, understandable, and usable.

The adopted new rules also establish procedures for the issuance of criminal history evaluation letters, in accordance with Occupations Code, §53.102, as required by House Bill 963, 81st Legislature, 2009, relating to the eligibility of certain applicants for occupational licenses.

SECTION-BY-SECTION SUMMARY

The following section-by-section summary considers only those sections which were substantially changed in language, meaning, or intent. A number of modifications are adopted for the chapter in order to meet the objectives of the rule review such as improving draftsmanship and ensuring clarity.

The following changes are adopted relating to the repeal and new Subchapter A (relating to General Provisions).

Regarding §781.101, the section is modified to improve draftsmanship, delete an obsolete term, and renumber the section. Subsection (c), relating to an exemption from the chapter, is deleted.

Regarding §781.102, the following definitions are adopted as additions to the section, or are adopted for substantive revision: Assessment; Counseling, clinical; Counseling, supportive or non-clinical; Dual or multiple relationship; Electronic practice; Field placement; Group supervision for licensure or for specialty recognition; Impaired professional; Independent practice recognition; Individual supervision for licensure or specialty recognition; Peer assistance program, and Supervision.

The following terms are modified to improve draftsmanship and to ensure clarity: ALJ, AMEC, Client, Clinical social work, Confidential information, Conditions of exchange, Contested case, Consultation, Continuing education, Direct practice, Endorsement, Examination, Exploitation, Fraud, Independent clinical practice, Independent non-clinical practice, Investigator, License, LMSW-AP, Non-clinical social work, Psychotherapy, Rules, Social work case management, and Social work practice.

The following terms are deleted as unnecessary, redundant, or outdated: Detrimental to the client, Family systems, Flagrant, Home study, Independent practice, Indirect practice, Part-time experience, Party, Persistently, Supportive counseling, and Telepractice.

The following changes are adopted relating to the repeal of Subchapter B (relating to The Board) and new Subchapter B (relating to Code of Conduct and Professional Standards of Practice).

Section 781.201(a)(10), §781.202(c) and (f), and §781.203(4) and (7) are modified to improve clarity.

Section 781.204(b) adds a sentence to clarify that "Payment of credentialing or other fees to insurance companies or other third party payers to be part of an approved provider list shall not be considered as a violation of this chapter." Subsection (k) addresses the use of electronic practice.

Section 781.210(a) adds a sentence to clarify that "Payment of credentialing or other fees to insurance companies or other third party payers to be part of an approved provider list shall not be considered as a violation of this chapter."

Section 781.211(g) is deleted as redundant and subsection (h) is renumbered as new (g).

Regarding §781.213, the section title and text are modified to improve clarity in prohibiting advertising in a field outside of social work.

Section 781.216 is modified to improve clarity regarding the board's discretion in providing a roster of licensees on its public website.

Regarding §781.218, the section title is modified to reflect updated terms and the former provisions are deleted as obsolete.

The following changes are adopted relating to the repeal of Subchapter C (relating to Licenses and Licensing Process) and new Subchapter C (relating to The Board).

Regarding §781.305(b), the rule is adopted to set out procedures for any individual to request an agenda item.

Regarding §781.310, the section clarifies the duties and responsibilities of the executive director.

Regarding §781.315, the section is modified to improve clarity.

Regarding §781.316, the fee section is modified to delete obsolete terminology; to make necessary corrections; to streamline the section; to delete the petition for reexamination fee, a fee that has never been collected by the board; and to establish a new fee for the issuance of criminal history evaluation letters.

Regarding §781.317, the section is adopted to implement the requirements of House Bill 963, 81st Legislature (2009), Occupations Code, §53.102, regarding the issuance of criminal history evaluation letters.

The following changes are adopted relating to the repeal of Subchapter D (relating to Code of Conduct and Professional Standards of Practice) and new Subchapter D (relating to Licenses and Licensing Process).

Regarding §781.401(a), the rule is modified to address licensure of persons who hold certain licenses issued by other jurisdictions. Regarding §781.401(a)(1)(A), the rule is modified to require an applicant for a clinical social worker license to provide proof of completion of a field placement in social work.

Section 781.401(a)(2)(A) requires an applicant for a master social worker license to provide proof of completion of a field placement in social work, and subsection (b)(1)(E) discontinues the acceptance of new supervision plans for the advanced practitioner specialty recognition, to be effective December 31, 2011.

Regarding proposed §781.401(c), the subsection is deleted as a result of comments, and subsections are renumbered.

Section 781.402(b), (c), (d), and (e) clarify that a supervision plan must be submitted and approved for each location of practice and a supervision verification form must be submitted for each location of practice.

Regarding §781.403(e), the rule is modified to reflect current guidelines of the Internal Revenue Service, relating to employees and independent contractors.

Regarding §781.404(b)(1), the rule is adopted to require that an applicant to be a board-approved supervisor must have practiced social work for at least two years at the applicant's current licensure category. Subsection (b)(2) is modified for clarity, and

subsection (b)(4) requires content-specific continuing education of board-approved supervisors.

Regarding §781.404(b), the section is modified to improve clarity. Regarding paragraph (11) of the subsection, rules are adopted to clearly establish duties and responsibilities of board-approved supervisors and supervisees, and to require that all board-approved supervisors must complete an approved supervision training course by January 1, 2014. Paragraph (12) of the subsection establishes requirements for frequency, duration, and format of supervision for certain applicants, including information regarding electronic supervision. Subparagraph (C) of the paragraph modifies the calculation method for acceptance of minimum requirements for supervision sessions. The calculation method for the duration and frequency of supervision sessions is changed from a required, specific minimum number of hours per month and a required, specific number of supervision sessions per month to an average minimum number of hours per month and an average number of supervision sessions per month extending over the entire time period of supervision.

Section 781.412(b) clarifies that an examination score is valid for minimum requirements for licensure for one year. Subsection (g) adopts that an application shall be denied if an applicant has cheated on the examination.

The following changes are adopted relating to the repeal and new Subchapter E (relating to License Renewal and Continuing Education).

Regarding §781.502, the section title is modified to ensure clarity. Regarding §781.506(a), the rule is modified to require that emeritus status may be requested if a licensee is at least 60 years of age and to require that the status be renewed biennially. Regarding §781.516(h), the rule is adopted to require that supervisor training course providers must submit updated curricula every six years.

Regarding §781.511(c), law and professional counseling are added as related fields in reference to automatic approval for continuing education provider status.

The following changes are adopted relating to the repeal and new Subchapter F (relating to Complaints and Violations).

Regarding 781.602(b), the rule is modified for clarity.

Regarding 781.603(h), the rule is modified to give the executive director authority to close non-jurisdictional complaints under certain circumstances.

Regarding 781.603(p), the rule is modified related to the procedure to address new allegations uncovered in the course of the investigation of a complaint.

Regarding 781.604(f), language regarding a written statement of dissent and a request for informal hearing is deleted, as the information is covered in §781.602(b).

Regarding §781.605, the terms "settlement conference" and "informal hearing" are modified to consistently use the term "informal conference."

Regarding §781.610, the section is adopted to establish procedures following violation of an order by a licensee.

The following changes are adopted relating to the repeal and new Subchapter G (relating to Formal Hearings) and Subchapter H (relating to Sanction Guidelines).

The modifications adopted for the subchapters meet the objectives of rule review, improve draftsmanship, and ensure clarity.

Regarding §781.806(1), the section is modified for clarity. Subparagraph (L) is added which describes requirements for supervision that is board-ordered as a condition of initial licensure, continued licensure, or a disciplinary action.

Regarding §781.806(2)(N) is adopted to clarify that participation in a peer assistance program may be a condition of probation in some disciplinary matters.

Regarding §781.808, the section is adopted to establish rules and procedures relating to peer assistance programs to assist impaired social workers. Subsection (g) is modified to specify that a licensee who knows or suspects that another licensee is impaired is required to report this information to the board within a specified timeframe.

COMMENTS

The board has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period. The commenters were thirty-four individuals and several associations, organizations, and entities, including the National Association of Social Workers/Texas Chapter, the Texas Society for Clinical Social Work, the Texas Association of Social Work Deans and Directors, the School of Social Work at Texas State University, the University of Houston Graduate College of Social Work, and the University of Texas System Office of Academic Affairs. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning §781.102, the proposed deletion of "Home Study" which was in the current rules at §781.102(34) before this proposal but did not appear in the proposed §781.102, one commenter supported this deletion.

Response: The board agrees.

Comment: Concerning §781.102(7), the definition of "Assessment," two commenters opposed the proposed language and offered modified language, and one commenter supported the proposed language.

Response: The board agreed in part and deleted the phrase, "however, it does not include diagnosing a physical condition."

Comment: Concerning §781.102(11), the definition of "Client," one commenter offered modified language and another commenter agreed with the proposed language.

Response: The board disagrees that modification is required. No change was made as a result of the comment.

Comment: Concerning §781.102(12), the definition of "Clinical Social Work," one commenter recommended amended language, one opposed the concepts of "assessment, treatment, and diagnosis" as essential to the definition, and one supported the proposed language.

Response: The board disagrees that modification is required. No change was made as a result of the comment.

Comment: Concerning §781.102(13), the definition of "Confidential information," one commenter supports the proposed change.

Response: The board agrees.

Comment: Concerning §781.102(15), the definition of "Conditions of exchange," one commenter supports the proposed change.

Response: The board agrees.

Comment: Concerning §781.102(17), the definition of "Counseling, clinical," three commenters opposed the proposed change, two of whom offered modified language.

Response: The board agrees in part and deleted "A method that social workers use to assist individuals, couples, families or groups learn how" and added in its place, "The use of clinical social work to assist individuals, couples, families or groups in learning..."

Comment: Concerning §781.102(18), the definition of "Counseling, non-clinical," two commenters opposed the proposed language and offered modified language, and one commenter supported.

Response: The board agreed in part and deleted "or non-clinical" and "Supportive counseling is not clinical social work."

Comment: Concerning §781.102(19), the definition of "Consultation," one commenter requested clarification/modification of the definition, one commenter offered modified language, and one commenter supported the proposed language.

Response: The board disagrees that clarification/modification is required. No change was made as a result of the comment.

Comment: Concerning §781.102(25), the definition of "Electronic practice," one commenter supported the proposed language, and one commenter suggested modified language.

Response: The board disagreed that modification is required. No change was made as a result of the comment.

Comment: Concerning §781.102(26), the definition of "Endorsement," one commenter offered modified language.

Response: The board disagrees that modification is required. No change was made as a result of the comment.

Comment: Concerning §781.102(35), the definition of "Impaired professional," four commenters offered suggestions for modified language.

Response: The board agrees in part and deleted "professional," added "social work" and "physical health, mental health, or by medication, drugs or alcohol," and deleted "addition or by mental illness."

Comment: Concerning §781.102(36), the definition of "Independent clinical practice," two commenters offered modified language.

Response: The board disagrees that modification is required. No change was made as a result of the comment.

Comment: Concerning §781.102(37), the definition of "Independent non-clinical practice," one commenter offered modified language.

Response: The board disagrees that modification is required. No change was made as a result of the comment.

Comment: Concerning §781.102(47), the definition of "Non-clinical social work," two commenters opposed the proposed rule, and one supported.

Response: The board disagrees that modification is required. No change was made as a result of the comment.

Comment: Concerning §781.102(50), the definition of "Psychotherapy," one commenter offered modified language.

Response: The board disagrees that modification is required. No change was made as a result of the comment.

Comment: Concerning §781.102(53), the definition of "Social work case management," one commenter suggested this is hard to distinguish from another existing definition, and one commenter supported the proposed language.

Response: The board disagrees that modification is required. No change was made as a result of the comment.

Comment: Concerning §781.102(55), the definition of "Social work practice," one commenter opposed inclusion of "administration of social work services, policy analysis and development, research, advocacy for vulnerable groups, and social work education" as unnecessarily expanding the definition of social work practice. One commenter opposed changes to language related to "marriage, family and couples intervention" from "marriage and family therapy" and other changes perceived to limit the diversity of the practice of social work, and offered modified language. Specific to the inclusion of "social work education" in this definition, thirty-two commenters offered comments, of which twenty opposed inclusion and twelve supported.

Response: The board disagrees that the new language unnecessarily expands or limits the practice of social work but rather acknowledges various forms of practice that currently exist and in which licensees engage. The board disagrees that adding "social work education" makes any significant change to regulations because "teaching" has been in the definition for many years, many textbooks recognize social work education as a method of social work intervention, and this addition does not require any individual to become licensed who would not have already been required to be licensed. Persons who engage in the practice(s) described in this definition are only required to be licensed if they are subject to the title protection provisions of Occupations Code, Chapter 505. No change was made as a result of the comment.

Comment: Concerning §781.102(57), the definition of "Supervision," one commenter supports the proposed language and one commenter offers modified language.

Response: The board disagrees that modification is required. No change was made as a result of the comment.

Comment: Concerning §781.201(a)(1), two commenters recommended adding additional groups in the non-discrimination language, by including the language "gender identity and expression" and "immigration status." One commenter opposes inclusion of "immigration status" and while the commenter supports the inclusion of "gender identity and expression," the commenter recommends the board make decisions in consideration of the political climate.

Response: The board disagrees that adding these two new phrases to the non-discrimination language is required because the existing language includes gender and nationality, which can be broadly interpreted, and because inclusion of these phrases may not be legally enforceable. No change was made as a result of these comments.

Comment: Concerning §781.201(a)(2), one commenter suggested replacing the word "which" to "that."

Response: The board disagrees with this suggestion. No change was made as a result of the comment.

Comment: Concerning §781.201(a)(2), one commenter opposed the limitation of the board using a singular American accrediting body and recommended modified language, and one commenter supported the proposed language.

Response: The board affirms its recognition of the Council on Higher Education (CHEA), as consistent with other state statutes and regulations, for use in imposing limitations on what degrees a licensee may advertise so as not to mislead the public. No change was made as a result of the comment.

Comment: Concerning §781.201(a)(10), two commenters supported modified language to include "medical condition" instead of "physical or mental health issues."

Response: The board agreed in part and deleted "physical or mental health issues" and added in its place, "physical health, mental health, medical condition..."

Comment: Concerning §781.202(c), one commenter suggested the addition of the phrase, "under a board-approved supervision plan."

Response: The board agrees and added this language.

Comment: Concerning §781.202(f), two commenters offered modified language, one commenter supported the proposed language, and one commenter disagreed with a portion of the subsection related to "assessment, treatment, and diagnosis" that does not represent a change from previous rules.

Response: The board agreed in part and added the word "may" to the language of the rule.

Comment: Concerning §781.202(g), one commenter requested clarification related to whether an individual using the National Association of Social Workers' credential, ACSW, would be in violation of the rule. The commenter proposed modified language.

Response: The board agreed in part and incorporated the substance of the modification into what it believes is a more appropriate subsection. The board clarified that the public protection issue relates to using a statement or credential that is considered deceptive, inaccurate, incomplete, or out of context; that would intentionally mislead the public; or that implies that the person holds a license in social work. The board included the language, "that is deliberately intended to" (mislead the public) in §781.216(d). With regard to other representations, the board makes determinations of violations of title protection on a case-by-case basis, considering the totality of facts and circumstances.

Comment: Concerning §781.203(2), one commenter recommended modified language.

Response: The board disagrees that modification is required. No change was made as a result of the comment.

Comment: Concerning §781.203(4), one commenter offered modified language, and one commenter requested clarification.

Response: The board agrees and changed "may" to "shall."

Comment: Concerning §781.203(7), one commenter offered modified language.

Response: The board agrees and replaced "provider's" with "licensee's."

Comment: Concerning §781.203(8), one commenter offered modified language.

Response: The board disagrees that modification is required. No change was made as a result of the comment.

Comment: Concerning §781.204, one commenter suggested reorganization of the subsection.

Response: The board disagrees. No change was made as a result of the comment.

Comment: Concerning §781.204(a), one commenter supports the proposed language.

Response: The board agrees.

Comment: Concerning §781.204(b), one commenter recommended modified language, and one commenter supported the proposed language.

Response: The board agreed in part and added, "Payment of credentialing or other fees to insurance companies or other third party payers to be part of an approved provider list shall not be considered as a violation of this chapter."

Comment: Concerning §781.204(f), three commenters recommended increasing the minimum number of years for record retention in board rules to seven or according to other state and federal laws.

Response: The board disagrees that the board needs to change its minimum requirements because other, more restrictive requirements exist elsewhere. The licensee is responsible to follow all laws and rules governing practice. The board's minimum requirement does not prevent any licensee from retaining records for a longer period of time, in compliance with other laws and rules. No change was made as a result of the comment.

Comment: Concerning §781.204(l), one commenter recommended adding "services or intervention."

Response: The board agreed and added the language.

Comment: Concerning §781.204(m), one commenter requested clarification for the deletion of "follow agency policy."

Response: The board believes that the change to "comply with the employer's policy" relating to gifts in excess of $25 is not substantially different but provides clarity. No change was made as a result of the comment.

Comment: Concerning §781.204(q), three commenters recommended modified language.

Response: The board disagrees that modification is required. No change was made as a result of the comment.

Comment: Concerning §781.206, one commenter suggested deletion of this rule as repetitive.

Response: The board disagrees. No change was made as a result of the comment.

Comment: Concerning §781.206(a), one commenter asked for clarification about how National Association of Social Worker (NASW) credentials fit in to representing professional qualifications or associations.

Response: The board does not believe that use of NASW credentials misrepresents qualifications. The public protection issue relates to using a statement or credential that is considered deceptive, inaccurate, incomplete, or out of context; that would intentionally mislead the public; or that implies that the person holds a license in social work. The board included the language, "that is deliberately intended to" (mislead the pub-

lic) in §781.216(d). With regard to other representations, the board makes determinations of violations of title protection on a case-by-case basis, considering the totality of facts and circumstances.

Comment: Concerning §781.209(4), three commenters recommended increasing the minimum number of years for record retention in board rules to seven or according to other state and federal laws. One commenter recommended consistency in language with previous sections of the board's rules, which would represent no change to proposed language.

Response: The board disagrees that the board needs to change its minimum requirements because other, more restrictive requirements exist elsewhere. The licensee is responsible to follow all laws and rules governing practice. The board's minimum requirement does not prevent any licensee from retaining records for a longer period of time, in compliance with other laws and rules. No change was made as a result of the comment.

Comment: Concerning §781.209(6), one commenter recommended additional language.

Response: The board disagrees that additional language is necessary. No change was made as a result of the comment.

Comment: Concerning §781.210(a), one commenter recommended adding language related to credentialing fees, and one commenter supported proposed language.

Response: The board agrees and added "Payment of credentialing or other fees to insurance companies or other third party payers to be part of an approved provider list shall not be considered as a violation of this chapter."

Comment: Concerning §781.210(c), one commenter offered modified language.

Response: The board disagrees that modification is required. No change was made as a result of the comment.

Comment: Concerning §781.210(d), two commenters requested clarification about the meaning of "any collateral service."

Response: The board disagreed that clarification in the language of the rule is required. No change was made as a result of the comment.

Comment: Concerning §781.210(e), one commenter offered modified language.

Response: The board agrees in part and revised the rule by moving the phrase "with the exception of a missed appointment" to the middle of the subsection.

Comment: Concerning §781.211(a), two commenters recommended deletion of "court room."

Response: The board agrees and deleted the phrase.

Comment: Concerning §781.211(c), one commenter recommended additional language.

Response: The board disagrees that additional language is required. No change was made as a result of the comment.

Comment: Concerning §781.211(e), one commenter offered modified language.

Response: The board agrees in part and changed the language from "six" months to "twelve" months.

Comment: Concerning §781.211(g), one commenter recommended deletion of subsection (g) as redundant.

Response: The board agrees and deleted subsection (g) and renumbered subsection (h) as new (g).

Comment: Concerning §781.215, one commenter requested clarification about where to display license if one has a home office and works as a contractor in multiple locations over which there is not control over office space to accommodate displaying of a license.

Response: The board clarifies that if one is an independent contractor who operates in multiple locations and does not have control over office space to accommodate displaying a license, one is not in violation of law or rule related to practice at locations in which the independent contractor cannot display a license for failure to display the license. No change was made as a result of the comment.

Comment: Concerning §781.216(d), one commenter asked for clarification related to individuals who hold membership in professional organizations but who are not members of the specific profession that the organization represents, and also asked for modified language related to deliberate intention to mislead the public.

Response: The board disagrees that clarification regarding membership in professional associations by individuals who are not members of that profession is required in rule, and agrees but has revised the subsection with reference to certification in a field outside of social work that is deliberately intended to mislead public

Comment: Concerning §781.305(a), one commenter recommended modified language.

Response: The board disagrees. No change was made as a result of the comment.

Comment: Concerning §781.312(a), two commenters recommended adding additional groups in the non-discrimination language, by including the language "gender identity and expression" and "immigration status. One commenter opposes inclusion of "immigration status" and while supports the inclusion of "gender identity and expression" recommends the board make decisions in consideration of the political climate.

Response: The board disagrees that adding these two new phrases to the non-discrimination language is required because the existing language includes gender and nationality, which can be broadly interpreted, and because inclusion of these phrases may not be legally enforceable. No change was made as a result of the comment.

Comment: Concerning §781.315, one commenter recommended modified language.

Response: The board agrees in part and deleted, "The roster will include, at a minimum, current licensees' names and addresses."

Comment: Concerning §781.401(a)(1)(A), three commenters support the requirement that individuals with PhDs must have had a field placement in a CSWE-accredited social work program to qualify for LCSW licensure, and one opposed.

Response: The board agrees. No change was made as a result of the comment.

Comment: Concerning §781.401(a)(2)(A), regarding the requirement that individuals with PhDs must have had a field placement in a CSWE-accredited social work program to qualify

for LMSW licensure, one commenter opposed, and one commenter made no specific recommendation.

Response: The board disagrees. No change was made as a result of the comment.

Comment: Concerning §781.401(b)(1)(E), one commenter opposed the phase-out of acceptance of new applications for the Advanced Practitioner specialty recognition and recommended instead that it be made into its own licensure category.

Response: The board disagrees. No change was made as a result of the comment.

Comment: Concerning §781.401(c), related to a proposed requirement for faculty licensure for those who are eligible for licensure by 2014, there were thirty-three commenters, of which twenty opposed this requirement, twelve supported, and one did not have an official position but expressed concerns about the board's process related to stakeholder involvement and the board's jurisdiction.

Response: The board withdrew this subsection and renumbered the remaining subsection.

Comment: Concerning §781.402(b) - (e), one commenter suggested reorganization of each subsection and modified language.

Response: The board disagrees and did not incorporate the suggested modifications.

Comment: Concerning §781.402(b)(5), one commenter suggested modified language, changing "moving" to "re-categorizing."

Response: The board agrees and adopted the modified language in the paragraph.

Comment: Concerning §781.402(e), one commenter suggested moving this section to a more appropriate location for the content at §781.806.

Response: The board agrees in part and repeated the language of §781.402(e) in §781.806(1)(L) for clarity.

Comment: Concerning §781.402(f), one commenter suggested moving this section to a more appropriate location for the content at §781.413.

Response: The board disagrees because the language would be redundant in §781.413. No change was made as a result of the comment.

Comment: Concerning §781.403(a), (c), §781.404(a), and (b)(1), commenters suggested to modify the rule language.

Response: The board disagrees. No change was made as a result of the comments.

Comment: Concerning §781.404(b)(2), one commenter suggested to modify the rule language.

Response: The board agrees in part and deleted the phrase "who shall currently be practicing social work and identify him or herself as a social worker, shall take professional responsibility" and inserted "is responsible."

Comment: Concerning §781.404(b)(3), there were three commenters. One commenter disagrees with the board's language related to the requirement that licensees must take a course that is approved by the board in order to become a board approved supervisor. The recommendation for modification was to substitute language that the licensee "must have demonstrated competency in supervision acceptable to the board" and to allow alternative minimum requirements. Another commenter did not suggest a change in the language of the rule but rather in strategies for implementing the rule. Another commenter supported the proposed language.

Response: The board disagrees with the modifications. No change was made as a result of the comment.

Comment: Concerning §781.404(b)(7)(A), one commenter disagrees with the rule that allows LCSWs to provide non-clinical supervision without specific training in non-clinical supervision.

Response: The board disagrees. No change was made as a result of the comment.

Comment: Concerning §781.404(b)(4), one commenter suggested modified language.

Response: The board disagrees. No change was made as a result of the comment.

Comment: Concerning §781.404(b)(11)(G), one commenter requested clarification about the meaning of "document all work experience during the supervisory period."

Response: The board agrees and deleted "The board requires that the supervisee document all work experience."

Comment: Concerning §781.404(b)(11)(P), one commenter suggested modified language. Another commenter opposed this requirement and suggested that this may represent an inappropriate restraint of trade.

Response: The board agrees with the suggestion for modification and deleted "professional development or board-ordered" and "regularly to address the supervisees changing developmental needs and to incorporate varied teaching and supervision methods," and inserted "whenever there is a change in agency of employment, job function, goals for supervision, or method by which supervision is provided." The board disagrees that this requirement represents an inappropriate restraint of trade, and indicated that supervisor status is voluntary, and costs to board-approved supervisors are an ordinary cost of doing business, and costs may be recouped by the licensee in charging fees for supervision services.

Comment: Concerning §781.404(b)(11)(Q), two commenters support the proposed language, and two commenters oppose the proposed language related to the requirement that all board-approved supervisors shall have taken a board-approved supervisor training course by January 1, 2014 in order to renew supervisor status.

Response: The board disagreed with the suggested modification or removal of the rule. No change was made as a result of the comment.

Comment: Concerning §781.404(b)(12)(C), two commenters recommended modification of the proposed language for calculation of minimum requirements for supervised experience for licensure in terms of averages of hours per month as opposed to actual hours per month to allow for normal variation in people's work and supervision schedules.

Response: The board agrees and inserted "on average" in two places.

Comment: Concerning §781.418(a)(1), one commenter supports the proposed language.

Response: The board agrees.

Comment: Concerning introduction of a new rule in Subchapter E, License Renewal and Continuing Education, related to continuing education requirements, one commenter recommended creation of a new rule related to specifying a minimum requirement for the number of continuing education hours that must be obtained in face-to-face contact versus online contact.

Response: The board disagrees that introduction of a new rule is required at this time but will consider this issue in the future. No change was made as a result of the comment.

Comment: Concerning §781.511(c), one commenter suggested adding law as an automatically approved field of practice for continuing education providers, and one commenter opposed including law as an automatically approved field of practice for continuing education, instead recommending approval through §781.513.

Response: The board agreed and added both law and professional counseling as entities that receive automatic approval as providers to the subsection.

Comment: Concerning §781.516, one commenter opposes the board's language related to the requirement that licensees must take a course that is approved by the board in order to become a board approved supervisor. The recommendation for modification was to substitute language that the licensee "must have demonstrated competency in supervision acceptable to the board" and to allow alternative minimum requirements.

Response: The board disagrees with the modifications. No change was made as a result of the comment.

Comment: Concerning §781.602(b), one commenter identified a typographical error, namely that "he" should be "the."

Response: The board agrees and made this correction.

Comment: Concerning §781.603(e), one commenter recommended that the board should modify the language of the rule to include an absolute statute of limitations on the time period within which a complaint must be filed, instead of the current and proposed language that includes a provision that the board may waive the current time limitations in cases of egregious acts or continuing threats to public health or safety.

Response: The board disagrees. No change was made as a result of the comment.

Comment: Concerning §781.603(h), one commenter recommended including the language that had been included in the first draft of rules related to a new provision in which the executive director may close complaints that are non-jurisdictional, subject to subsequent review by the Ethics Committee.

Response: The board agrees and inserted the relevant language and deleted the outdated language.

Comment: Concerning §781.603(p), one commenter requested changes to the rule and process by which respondents are afforded the opportunity to access information related to the complaint against them, and more specifically related to allowing respondents the opportunity to review the allegations/findings contained in the investigation report prior to the Ethics Committee meeting to allow respondents opportunity to know the exact allegations against them.

Response: The board agrees in part and inserted, "If the investigation produces evidence of possible violations not described in the complaint, a separate complaint will be opened regarding such alleged violations. Notice will be given to the licensee that the new complaint will be heard at a subsequent meeting of the Ethics Committee. The committee may proceed with the action regarding the original complaint." The board deleted "The committee may take action based on the complaint allegations or any actions uncovered during the investigation."

Comment: Concerning §781.806(1)(E), one commenter requested clarification about how this rule relates to temporary relocations and the definition of "domicile."

Response: The board agrees in part and deleted "residency or" in connection with probation of licensees.

Comment: Concerning §781.806(2)(G), one commenter recommended replacing "disability" with "medical condition."

Response: The board disagrees and made no change at this time.

Comment: Concerning §781.806(2)(H), two commenters recommended replacing "disability" with "medical condition."

Response: The board agrees in part and deleted "or disability" and inserted "physical illness or."

Comment: Concerning §781.808, regarding authorization for the board to recognize peer assistance programs, two commenters supported this inclusion.

Response: The board agrees.

Comment: Concerning §781.808(g), one commenter recommended modified language.

Response: The board agrees and added "within 30 days."

## SUBCHAPTER A. GENERAL PROVISIONS

**22 TAC §781.101, §781.102**

STATUTORY AUTHORITY

The repeals are authorized by the Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties; and Texas Occupations Code, §502.203, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter; and Texas Occupations Code, Chapter 53, concerning criminal history evaluation. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Timothy Brown
Chair
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For further information, please call: (512) 458-7111 x6972

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## SUBCHAPTER B. THE BOARD

**22 TAC §§781.201 - 781.217**

STATUTORY AUTHORITY

The repeals are authorized by the Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties; and Texas Occupations Code, §502.203, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter; and Texas Occupations Code, Chapter 53, concerning criminal history evaluation. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER C. LICENSES AND LICENSING PROCESS

**22 TAC §§781.301 - 781.318**

STATUTORY AUTHORITY

The repeals are authorized by the Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties; and Texas Occupations Code, §502.203, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter; and Texas Occupations Code, Chapter 53, concerning criminal history evaluation. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. CODE OF CONDUCT AND PROFESSIONAL STANDARDS OF PRACTICE

**22 TAC §§781.401 - 781.419**

STATUTORY AUTHORITY

The repeals are authorized by the Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties; and Texas Occupations Code, §502.203, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter; and Texas Occupations Code, Chapter 53, concerning criminal history evaluation. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER E. LICENSE RENEWAL AND CONTINUING EDUCATION

**22 TAC §§781.501 - 781.517**

STATUTORY AUTHORITY

The repeals are authorized by the Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties; and Texas Occupations Code, §502.203, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter; and Texas Occupations Code, Chapter 53, concerning criminal history evaluation. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER F. COMPLAINTS AND VIOLATIONS

**22 TAC §§781.601 - 781.608, 781.610**

STATUTORY AUTHORITY

The repeals are authorized by the Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties; and Texas Occupations Code, §502.203, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter; and Texas Occupations Code, Chapter 53, concerning criminal his-

tory evaluation. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER G. FORMAL HEARINGS

### 22 TAC §§781.701 - 781.704

STATUTORY AUTHORITY

The repeals are authorized by the Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties; and Texas Occupations Code, §502.203, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter; and Texas Occupations Code, Chapter 53, concerning criminal history evaluation. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER H. SANCTION GUIDELINES

### 22 TAC §§781.801 - 781.807

STATUTORY AUTHORITY

The repeals are authorized by the Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties; and Texas Occupations Code, §502.203, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter; and Texas Occupations Code, Chapter 53, concerning criminal history evaluation. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER A. GENERAL PROVISIONS

### 22 TAC §781.101, §781.102

STATUTORY AUTHORITY

The new sections are authorized by the Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties; and Texas Occupations Code, §502.203, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter; and Texas Occupations Code, Chapter 53, concerning criminal history evaluation. Review of the sections implements Government Code, §2001.039.

*§781.102. Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accredited colleges or universities--An educational institution that is accredited by an accrediting agency recognized by the Council on Higher Education Accreditation.

(2) Act--The Social Work Practice Act, Texas Occupations Code, Chapter 505, concerning the licensure and regulation of social workers.

(3) ALJ--An Administrative Law Judge within the State Office of Administrative Hearings who conducts hearings under this chapter.

(4) Agency--A public or private employer, contractor or business entity providing social work services.

(5) AMEC--Alternative method of examining competency, as referenced in Texas Occupations Code, §505.356(3), regarding re-examination.

(6) APA--The Administrative Procedure Act, Government Code, Chapter 2001.

(7) Assessment--An on-going process of gathering information about and reaching an understanding of the client or client group's characteristics, perceived concerns and real problems, strengths and weaknesses, and opportunities and constraints; assessment may involve administering, scoring and interpreting instruments designed to measure factors about the client or client group.

(8) Association of Social Work Boards (ASWB)--The international organization which represents regulatory boards of social work and administers the national examinations utilized in the assessment for licensure.

(9) Board--Texas State Board of Social Worker Examiners.

(10) Case record--Any information related to a client and the services provided to that client, however recorded and stored.

(11) Client--An individual, family, couple, group or organization that receives social work services from a person identified as a social worker who is either licensed or unlicensed by the board.

(12) Clinical social work--A specialty within the practice of master social work that requires applying social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or bio-psychosocial functioning of individuals, couples, families, groups, and/or persons who are adversely affected by social or psychosocial stress or health impairment. Clinical social work practice involves using specialized clinical knowledge and advanced clinical skills to assess, diagnose, and treat mental, emotional, and behavioral disorders, conditions and addictions, including severe mental illness and serious emotional disturbances in adults, adolescents and children. Treatment methods may include, but are not limited to, providing individual, marital, couple, family, and group psychotherapy. Clinical social workers are qualified and authorized to use the Diagnostic and Statistical Manual of Mental Disorders (DSM), the International Classification of Diseases (ICD), Current Procedural Terminology (CPT) codes, and other diagnostic classification systems in assessment, diagnosis, and other practice activities. The practice of clinical social work is restricted to either a Licensed Clinical Social Worker, or a Licensed Master Social Worker under clinical supervision in employment or under a clinical supervision plan.

(13) Confidential information--Individually identifiable information relating to a client, including the client's identity, demographic information, physical or mental health condition, the services the client received, and payment for past, present, or future services the client received or will receive. Confidentiality is limited in cases where the law requires mandated reporting, where third persons have legal rights to the information, and where clients grant permission to share confidential information.

(14) Completed application--The official social work application form, fees and all supporting documentation which meet the criteria set out in this chapter.

(15) Conditions of exchange--Setting reimbursement rates or fee structures, as well as business rules or policies involving issues such as setting and cancelling appointments, maintaining office hours, and managing insurance claims.

(16) Contested case--A proceeding in accordance with the APA and this chapter, including, but not limited to, rule enforcement and licensing, in which the board determines the party's legal rights, duties, or privileges after the party has an opportunity for a hearing.

(17) Counseling, clinical--The use of clinical social work to assist individuals, couples, families or groups in learning to solve problems and make decisions about personal, health, social, educational, vocational, financial, and other interpersonal concerns.

(18) Counseling, supportive--The methods used to help individuals create and maintain adaptive patterns. Such methods may include, but are not limited to, building community resources and networks, linking clients with services and resources, educating clients and informing the public, helping clients identify and build strengths, leading community groups, and providing reassurance and support.

(19) Consultation--Providing advice, opinions and conferring with other professionals regarding social work practice.

(20) Continuing education--Education or training aimed at maintaining, improving, or enhancing social work practice.

(21) Council on Social Work Education (CSWE)--The national organization that accredits social work education schools and programs.

(22) Department--Department of State Health Services.

(23) Direct practice--Providing social work services through personal contact and immediate influence to help clients achieve goals.

(24) Dual or multiple relationship--A relationship that occurs when social workers interact with clients in more than one capacity, whether it be before, during, or after the professional, social, or business relationship. Dual or multiple relationships can occur simultaneously or consecutively.

(25) Electronic practice--Interactive social work practice that is aided by or achieved through technological methods, such as the web, the Internet, social media, electronic chat groups, interactive TV, list serves, cell phones, telephones, faxes, and other emerging technology.

(26) Endorsement--The process whereby the board reviews licensure requirements a professional has completed while under another jurisdiction's regulatory authority. The board may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(27) Examination--A standardized test or examination, approved by the board, which measures an individual's social work knowledge, skills and abilities.

(28) Exploitation--Using a pattern, practice or scheme of conduct that can reasonably be construed as primarily meeting the licensee's needs or benefitting the licensee rather than being in the best interest of the client. Exploitation involves the professional taking advantage of the inherently unequal power differential between client and professional. Exploitation also includes behavior at the expense of another practitioner. Exploitation may involve financial, business, emotional, sexual, verbal, religious and/or relational forms.

(29) Field placement--A formal, supervised, planned, and evaluated experience in a professional setting under the auspices of a CSWE-accredited social work program and meeting CSWE standards.

(30) Formal hearing--A hearing or proceeding in accordance with this chapter, including a contested case as defined in this section to address the issues of a contested case.

(31) Fraud--A social worker's misrepresentation or omission about qualifications, services, finances, or related activities or information, or as defined by the Texas Penal Code or by other state or federal law.

(32) Full-time experience--Providing social work services thirty or more hours per week.

(33) Group supervision for licensure or for specialty recognition--Providing supervision to a minimum of two and a maximum of six supervisees in a designated supervision session.

(34) Health care professional--A licensee or any other person licensed, certified, or registered by the State of Texas in a health related profession.

(35) Impaired professional--A licensee whose ability to perform social work services is impaired by the licensee's physical health, mental health, or by medication, drugs or alcohol.

(36) Independent clinical practice--The practice of clinical social work in which the social worker, after having completed all requirements for clinical licensure, assumes responsibility and accountability for the nature and quality of client services, pro bono or in exchange for direct payment or third party reimbursement. Independent clinical social work occurs in independent settings.

(37) Independent non-clinical practice--The practice of non-clinical social work outside the jurisdiction of an organizational setting, in which the social worker, after having completed all requirements for independent non-clinical practice recognition, assumes responsibility and accountability for the nature and quality of client services, pro bono or in exchange for direct payment or third party reimbursement.

(38) Independent Practice Recognition--A specialty recognition related to non-clinical social work at the LBSW or LMSW category of licensure, which denotes that the licensee has earned the specialty recognition, commonly called IPR, by successfully completing additional supervision which enhances skills in providing independent non-clinical social work.

(39) Individual supervision for licensure or specialty recognition--Supervision for professional development provided to one supervisee during the designated supervision session.

(40) Investigator--A department employee or other authorized person whom the board uses to investigate allegations of professional misconduct.

(41) LBSW--Licensed Baccalaureate Social Worker.

(42) LCSW--Licensed Clinical Social Worker.

(43) License--A regular or temporary board-issued license, including LBSW, LMSW, and LCSW. Some licenses may carry an additional specialty recognition, such as LMSW-AP, LBSW-IPR, or LMSW-IPR.

(44) Licensee--A person licensed by the board to practice social work.

(45) LMSW--Licensed Master Social Worker.

(46) LMSW-AP--Licensed Master Social Worker with the Advanced Practitioner specialty recognition for non-clinical practice.

(47) Non-clinical social work--Professional social work which incorporates non-clinical work with individuals, families, groups, communities, and social systems which may involve locating resources, negotiating and advocating on behalf of clients or client groups, administering programs and agencies, community organizing, teaching, researching, providing employment or professional development non-clinical supervision, developing and analyzing policy, fund-raising, and other non-clinical activities.

(48) Peer assistance program--A program designed to help an impaired professional return to fitness for practice.

(49) Person--An individual, corporation, partnership, or other legal entity.

(50) Psychotherapy--Treatment in which a qualified social worker uses a specialized, formal interaction with an individual, couple, family, or group by establishing and maintaining a therapeutic relationship to understand and intervene in intrapersonal, interpersonal and psychosocial dynamics; and to diagnose and treat mental, emotional, and behavioral disorders and addictions.

(51) Recognition--Authorization from the board to engage in the independent or specialty practice of social work services.

(52) Rules--Provisions of this chapter specifying how the board implements the Act, how the board operates, and how individuals are affected by the Act.

(53) Social work case management--Using a bio-psychosocial perspective to assess, evaluate, implement, monitor and advocate for services on behalf of and in collaboration with the identified client or client group.

(54) Social worker--A person licensed under the Act.

(55) Social work practice--Services which an employee, independent practitioner, consultant, or volunteer provides for compensation or pro bono to effect changes in human behavior, a person's emotional responses, interpersonal relationships, and the social conditions of individuals, families, groups, organizations, and communities. Social work practice is guided by specialized knowledge, acquired through formal social work education. Social workers specialize in understanding how humans develop and behave within social environments, and in using methods to enhance the functioning of individuals, families, groups, communities, and organizations. Social work practice involves the disciplined application of social work values, principles, and methods including, but not limited to, psychotherapy; marriage, family, and couples intervention; group therapy and group work; mediation; case management; supervision and administration of social work services and programs; counseling; assessment, diagnosis, treatment; policy analysis and development; research; advocacy for vulnerable groups; social work education; and evaluation.

(56) Supervisor, board-approved--A person meeting the requirements set out in §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition), to supervise a licensee towards the LCSW, LMSW-AP or Independent Practice Recognition, or as a result of a board order.

(57) Supervision--Supervision includes:

(A) administrative or work-related supervision of an employee, contractor or volunteer that is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(B) clinical supervision of a Licensed Master Social Worker in a setting in which the LMSW is providing clinical services; the supervision may be provided by a Licensed Professional Counselor, Licensed Psychologist, Licensed Marriage and Family Therapist, Licensed Clinical Social Worker or Psychiatrist. This supervision is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(C) clinical supervision of a Licensed Master Social Worker, who is providing clinical services and is under a board-approved supervision plan to fulfill supervision requirements for achieving the LCSW; a Licensed Clinical Social Worker who is a board-approved supervisor delivers this supervision;

(D) non-clinical supervision of a Licensed Master Social Worker or Licensed Baccalaureate Social Worker who is providing non-clinical social work service toward qualifications for independent non-clinical practice recognition; this supervision is delivered by a board-approved supervisor;

(E) non-clinical supervision of a Licensed Master Social Worker who is providing non-clinical social work service toward qualifications for the LMSW-AP; this supervision is delivered by a board-approved supervisor;

(F) supervision of a probationary Licensed Master Social Worker or Licensed Baccalaureate Social Worker providing non-clinical services by a board-approved supervisor toward licensure under the AMEC program; or

(G) board-ordered supervision of a licensee by a board-approved supervisor pursuant to a disciplinary order or as a condition of new or continued licensure.

(58) Supervision hour--A supervision hour is a minimum of 60 minutes in length.

(59) Termination--Ending social work services with a client.

(60) Texas Open Meetings Act--Government Code, Chapter 551.

(61) Texas Public Information Act--Government Code, Chapter 552.

(62) Waiver--The suspension of educational, professional, and/or examination requirements for applicants who meet the criteria for licensure under special conditions based on appeal to the board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER B. CODE OF CONDUCT AND PROFESSIONAL STANDARDS OF PRACTICE

**22 TAC §§781.201 - 781.219**

STATUTORY AUTHORITY

The new sections are authorized by the Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties; and Texas Occupations Code, §502.203, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter; and Texas Occupations Code, Chapter 53, concerning criminal history evaluation. Review of the sections implements Government Code, §2001.039.

*§781.201. Code of Conduct.*

(a) A social worker must observe and comply with the code of conduct and standards of practice set forth in this subchapter. Any violation of the code of conduct or standards of practice will constitute unethical conduct or conduct that discredits or tends to discredit the profession of social work and is grounds for disciplinary action.

(1) A social worker shall not refuse to perform any act or service for which the person is licensed solely on the basis of a client's age, gender, race, color, religion, national origin, disability, sexual orientation, or political affiliation.

(2) A social worker shall truthfully report her or his services, professional credentials and qualifications to clients or potential clients. A social worker shall not advertise or claim a degree from a college or university which is not accredited by the Council on Higher Education Accreditation.

(3) A social worker shall only offer those services that are within his or her professional competency, and shall provide services within accepted professional standards of practice, appropriate to the client's needs.

(4) A social worker shall strive to maintain and improve her or his professional knowledge, skills and abilities.

(5) A social worker shall base all services on an assessment, evaluation or diagnosis of the client.

(6) A social worker shall provide the client with a clear description of services, schedules, fees and billing at the initiation of services.

(7) A social worker shall safeguard the client's rights to confidentiality within the limits of the law.

(8) A social worker shall be responsible for setting and maintaining professional boundaries.

(9) A social worker shall not have sexual contact with a client or a person who has been a client.

(10) A social worker shall refrain from providing services while impaired by physical health, mental health, medical condition, or by medication, drugs or alcohol.

(11) A social worker shall not exploit his or her position of trust with a client or former client.

(12) A social worker shall evaluate a client's progress on a continuing basis to guide service delivery and will make use of supervision and consultation as indicated by the client's needs.

(13) A social worker shall refer a client for those services that the social worker is unable to meet, and shall terminate services to a client when continuing to provide services is no longer in the client's best interest.

(b) The grounds for disciplinary action of a social worker shall be based on the code of conduct or standards of practice in effect at the time of the violation.

*§781.202. The Practice of Social Work.*

(a) Practice of Baccalaureate Social Work--Applying social work theory, knowledge, methods, ethics and the professional use of self to restore or enhance social, psychosocial, or bio-psychosocial functioning of individuals, couples, families, groups, organizations and communities. Baccalaureate Social Work is generalist practice and may include interviewing, assessment, planning, intervention, evaluation, case management, mediation, counseling, supportive counseling, direct practice, information and referral, problem solving, supervision, consultation, education, advocacy, community organization, and policy and program development, implementation, and administration.

(b) Practice of Independent Non-Clinical Baccalaureate Social Work--An LBSW recognized for independent practice, known as LBSW-IPR, may provide any non-clinical baccalaureate social work services in either an employment or an independent practice setting. An LBSW-IPR may work under contract, bill directly for services, and bill third parties for reimbursements for services. An LBSW-IPR must restrict his or her independent practice to providing non-clinical social work services.

(c) Practice of Master's Social Work--Applying social work theory, knowledge, methods and ethics and the professional use of self to restore or enhance social, psychosocial, or bio-psychosocial functioning of individuals, couples, families, groups, organizations and communities. An LMSW may practice clinical social work in an agency employment setting under clinical supervision, under a board-approved supervision plan, or under contract with an agency when under a board-approved clinical supervision plan. Master's Social Work practice may include applying specialized knowledge and advanced practice skills in assessment, treatment, planning,

implementation and evaluation, case management, mediation, counseling, supportive counseling, direct practice, information and referral, supervision, consultation, education, research, advocacy, community organization and developing, implementing and administering policies, programs and activities. An LMSW may engage in Baccalaureate Social Work practice.

(d) Advanced Non-Clinical Practice of LMSWs--An LMSW recognized as an Advanced Practitioner (LMSW-AP) may provide any non-clinical social work services in either an employment or an independent practice setting. An LMSW-AP may work under contract, bill directly for services, and bill third parties for reimbursements for services. An LMSW-AP must restrict his or her practice to providing non-clinical social work services.

(e) Independent Practice for LMSWs--An LMSW recognized for independent practice may provide any non-clinical social work services in either an employment or an independent practice setting. This licensee is designated as LMSW-IPR. An LMSW-IPR may work under contract, bill directly for services, and bill third parties for reimbursements for services. An LMSW-IPR must restrict his or her independent practice to providing non-clinical social work services.

(f) Practice of Clinical Social Work--The practice of social work that requires applying social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or bio-psychosocial functioning of individuals, couples, families, groups, and/or persons who are adversely affected by social or psychosocial stress or health impairment. The practice of clinical social work requires applying specialized clinical knowledge and advanced clinical skills in assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions, including severe mental illness and serious emotional disturbances in adults, adolescents, and children. The clinical social worker may engage in Baccalaureate Social Work practice and Master's Social Work practice. Clinical treatment methods may include but are not limited to providing individual, marital, couple, family, and group therapy, mediation, counseling, supportive counseling, direct practice, and psychotherapy. Clinical social workers are qualified and authorized to use the Diagnostic and Statistical Manual of Mental Disorders (DSM), the International Classification of Diseases (ICD), Current Procedural Terminology (CPT) Codes, and other diagnostic classification systems in assessment, diagnosis, treatment and other practice activities. An LCSW may provide any clinical or non-clinical social work service or supervision in either an employment or independent practice setting. An LCSW may work under contract, bill directly for services, and bill third parties for service reimbursements.

(g) A licensee who is not recognized for independent practice or who is not under a board-approved non-clinical supervision plan must not engage in any independent practice that falls within the definition of social work practice in §781.102 of this title (relating to Definitions) without being licensed and recognized by the board, unless the person is licensed in another profession and acting solely within the scope of that license. If the person is practicing professionally under another license, the person may not use the titles "licensed clinical social worker," "licensed master social worker," "licensed social worker," or "licensed baccalaureate social worker," or any other title or initials that imply social work licensure unless one holds the appropriate license or independent practice recognition.

(h) An LBSW or LMSW who is not recognized for independent practice may not provide direct social work services to clients from a location that she or he owns or leases and that is not owned or leased by an employer or other legal entity with responsibility for the client. This does not preclude in-home services such as in-home health care or the use of electronic media to provide services in an emergency.

(i) An LBSW or LMSW who is not recognized for independent practice may practice for remuneration in a direct employment or agency setting but may not work independently, bill directly to patients or bill directly to third party payers, unless the LBSW or LMSW is under a formal board-approved supervision plan.

*§781.203. General Standards of Practice.*

This section establishes standards of professional conduct required of a social worker. The licensee, following applicable statutes:

(1) shall not knowingly offer or provide professional services to an individual concurrently receiving professional services from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent professional services, the licensee shall take immediate and reasonable action to inform the other mental health services provider;

(2) shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from the relationship. If continued professional services are indicated, the licensee shall take reasonable steps to facilitate transferring the client to an appropriate source of service;

(3) shall not evaluate any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses with the evaluation that the licensee has not personally interviewed the individual;

(4) shall not persistently or flagrantly over treat a client;

(5) shall not aid and abet the unlicensed practice of social work by a person required to be licensed under the Act;

(6) shall not participate in any way in falsifying licensure applications or any other documents submitted to the board;

(7) shall ensure that, both before services commence and as services progress, the client knows the licensee's qualifications and any intent to delegate service provision; any restrictions the board has placed on the licensee's license; the limits on confidentiality and privacy; and applicable fees and payment arrangements;

(8) if the client must barter for services, it is the professional's responsibility to ensure that the client is in no way harmed. The value of the barter shall be agreed upon in advance and shall not exceed customary charges for the service or goods; and

(9) shall ensure that the client or a legally authorized person representing the client has signed a consent for services, when appropriate.

*§781.204. Relationships with Clients.*

(a) A social worker shall inform in writing a prospective client about the nature of the professional relationship, which can include but is not limited to office procedures, after-hours coverage, services provided, fees, and arrangements for payment.

(b) The social worker shall not give or receive a commission, rebate, or any other form of remuneration for referring clients. Payment of credentialing or other fees to insurance companies or other third party payers to be part of an approved provider list shall not be considered as a violation of this chapter.

(c) A social worker shall not enter into a business relationship with a client. This rule does not prohibit a professional social work relationship with a client, as described in this subchapter.

(d) A social worker shall not engage in activities that seek to primarily meet the social worker's personal needs or personal gain instead of the needs of the client.

(e) A social worker shall be responsible for setting and maintaining professional boundaries.

(f) A social worker shall keep accurate records of services to include, but not be limited to, dates of services, types of services, progress or case notes and billing information for a minimum of five years for an adult client and five years beyond the age of 18 years of age for a minor, or in compliance with applicable laws or professional standards.

(g) A social worker shall bill clients or third parties for only those services actually rendered or as agreed to by mutual written understanding.

(h) A licensee shall not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the effectiveness of the licensee's services; the licensee's qualifications, capabilities, background, training, experience, education, professional affiliations, fees, products, or publications; the type, effectiveness, qualifications, and products of services offered by an organization or agency; or the practice or field of social work.

(i) If the licensee learns that false, misleading, deceptive, fraudulent or exaggerated statements about the services, qualifications, or products have been made, the licensee shall take all available steps to correct the inappropriate claims, prevent their reoccurrence, and report the incident to the board.

(j) A licensee shall provide social work intervention only in the context of a professional relationship.

(k) Electronic practice may be used judiciously as part of the social work process and the supervision process. Social workers engaging in electronic practice must be licensed in Texas and adhere to provisions of this chapter.

(l) The licensee shall not provide social work services or intervention to previous or current family members; personal friends; educational or business associates; or individuals whose welfare might be jeopardized by a dual or multiple relationship.

(m) The licensee shall not accept from or give to a client any gift with a value in excess of $25. If the licensee's employer prohibits giving or receiving gifts, the licensee shall comply with the employer's policy.

(n) The licensee may not borrow or lend money or items of value to clients or relatives of clients.

(o) The licensee shall take reasonable precautions to protect individuals from physical or emotional harm resulting from interaction within individual and group settings.

(p) A licensee shall not promote the licensee's personal or business activities that are unrelated to the current professional relationship.

(q) A licensee shall set and maintain professional boundaries, avoiding dual or multiple relationships with clients. If a dual or multiple relationship develops, the social worker is responsible for ensuring the client is safe.

*§781.210. Billing and Financial Relationships.*

(a) In accordance with the provisions of the Act, §505.451, a licensee is subject to disciplinary action if the licensee directly or indirectly, overtly or covertly, in cash or in kind, offers to pay or agrees to accept remuneration to or from any person or entity for securing or soliciting a client or patronage. Payment of credentialing or other fees to insurance companies or other third party payers to be part of an approved provider list shall not be considered as a violation of this chapter.

(b) A licensee employed or under contract with a chemical dependency facility or a mental health facility, shall comply with the requirements in the Texas Health and Safety Code, §164.006, relating to soliciting and contracting with certain referral sources. Compliance with the Treatment Facilities Marketing Practices Act, Texas Health and Safety Code, Chapter 164, shall not be considered as a violation of state law relating to illegal remuneration.

(c) A licensee shall not knowingly or flagrantly overcharge a client, and shall bill clients and/or third parties for only those services that the licensee actually renders.

(d) Billing documents shall accurately reflect any collateral service the licensee uses to help serve the client.

(e) A licensee may not submit to a client and/or a third party payer a bill for services that the licensee knows were not provided, with the exception of a missed appointment, or knows were improper, unreasonable or unnecessary.

*§781.211. Client Confidentiality.*

(a) Communication between a licensee and client, as well as the client's records, however created or stored, are confidential under the provisions of the Texas Health and Safety Code, Chapter 181, Texas Health and Safety Code, Chapter 611, and other state or federal statutes or rules, including rules of evidence, where such statutes or rules apply to a licensee's practice.

(b) A licensee shall not disclose any communication, record, or client identity except as provided in the Texas Health and Safety Code, the Health Insurance Portability and Accountability Act (HIPAA), and/or other applicable state or federal statutes or rules.

(c) A licensee shall comply with Texas Health and Safety Code, Chapter 611, concerning access to mental health records.

(d) To release information for or about clients, a licensee shall have written permission signed by the client or the client guardian. That permission, which must be dated, shall include the client's name and identifying information; the purpose for releasing the information; the individual or entity to which the information is released; the length of time the release is authorized; the signature of the client or guardian representative; and date of signature.

(e) The social worker shall maintain the written release of information in the permanent client record and shall review and update it at least every twelve months.

(f) A licensee shall report information if required by any of the following statutes:

(1) Texas Family Code, Chapter 261, concerning abuse or neglect of minors;

(2) Texas Human Resources Code, Chapter 48, concerning abuse, neglect, or exploitation of elderly or disabled persons;

(3) Texas Health and Safety Code, §161.131 *et seq.,* concerning abuse, neglect, and illegal, unprofessional, or unethical conduct in an in-patient mental health facility, a chemical dependency treatment facility or a hospital providing comprehensive medical rehabilitation services; and

(4) Texas Civil Practice and Remedies Code, §81.006, concerning sexual exploitation by a mental health services provider.

(g) A licensee may take reasonable action to inform only medical or law enforcement personnel if the professional determines that a client or others are at imminent risk of physical injury, or a client is in immediate risk of mental or emotional injury, in accordance with the

Texas Health and Safety Code, Chapter 611, concerning mental health records.

*§781.216. Advertising and Announcements.*

(a) Social workers' advertisements and announcements shall not contain deceptive, inaccurate, incomplete, out-of-date, or out-of-context information about services or competence. Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, commercial products, website entries, email, cell phone communications, social media communications, and billing statements.

(b) The board imposes no restrictions on the advertising medium a social worker uses, including personal appearances, use of personal voice, size or duration of the advertisement or use of a trade name.

(c) All advertisements or announcements of a licensee's professional services, including website pages, social media communications, or telephone directory listings, shall clearly state the social worker's licensure designation and any specialty recognition, if any.

(d) A social worker shall not announce or advertise any information or reference to the social worker's certification in a field outside of social work that is deliberately intended to mislead the public.

(e) A licensee who retains or hires others to advertise or promote the licensee's practice remains responsible for the statements and representations made.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Timothy Brown
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## SUBCHAPTER C. THE BOARD

**22 TAC §§781.301 - 781.317**

STATUTORY AUTHORITY

The new sections are authorized by the Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties; and Texas Occupations Code, §502.203, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter; and Texas Occupations Code, Chapter 53, concerning criminal history evaluation. Review of the sections implements Government Code, §2001.039.

*§781.315. Roster of Licensees.*

The board, on its website, will make available to the general public a roster of licensees at its discretion.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. LICENSES AND LICENSING PROCESS

**22 TAC §§781.401 - 781.418**

STATUTORY AUTHORITY

The new sections are authorized by the Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties; and Texas Occupations Code, §502.203, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter; and Texas Occupations Code, Chapter 53, concerning criminal history evaluation. Review of the sections implements Government Code, §2001.039.

*§781.401. Qualifications for Licensure.*

(a) Licensure. The following education and experience is required for licensure as designated. If an applicant for a license has held a substantially equivalent license in good standing in another jurisdiction for at least five years immediately preceding the date of application, the applicant will be deemed to have met the experience requirement under this chapter. If the applicant has been licensed or certified in another jurisdiction for fewer than five years preceding the date of application, the applicant must meet current Texas licensing requirements.

(1) Licensed Clinical Social Worker (LCSW).

(A) Has been conferred a master's degree in social work from a CSWE-accredited social work program, or a doctoral degree in social work from an accredited institution of higher learning acceptable to the board, and has documentation in the form of a university transcript of successfully completing a field placement in social work.

(B) Has had 3000 hours of board-approved supervised professional clinical experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. Board-approved supervised professional experience must comply with §781.404 of this title (relating to Recognition as a Board-approved Supervisor and the Supervision Process) and all other applicable laws and rules.

(C) Has had a minimum of 100 hours of board-approved supervision, over the course of the 3000 hours of experience, with a board-approved supervisor. Supervised experience must have occurred within the five calendar years immediately preceding the date of LCSW application. If the social worker completed supervision in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the board accept alternate verification of supervision.

(D) Has passed the Clinical examination administered nationally by ASWB.

(2) Licensed Master Social Worker (LMSW).

(A) Has been conferred a master's degree in social work from a CSWE-accredited social work program, or a doctoral degree in social work from an accredited university acceptable to the board, and has documentation in the form of a university transcript of successfully completing a field placement in social work.

(B) Has passed the Master's examination administered nationally by ASWB.

(3) Licensed Baccalaureate Social Worker (LBSW).

(A) Has been conferred a baccalaureate degree in social work from a CSWE accredited social work program.

(B) Has passed the Bachelors examination administered nationally by ASWB.

(b) Specialty Recognition. The following education and experience is required for specialty recognitions.

(1) Licensed Master Social Worker-Advanced Practitioner (LMSW-AP).

(A) Is currently licensed in the State of Texas or meets the current requirements for licensure as an LMSW.

(B) While fully licensed as a social worker, has had 3000 hours of board-approved supervised professional non-clinical social work experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. Board-approved supervised professional experience must comply with §781.404 of this title and all other applicable laws and rules.

(C) Has had a minimum of 100 hours of board-approved supervision, over the course of the 3000 hours of experience, with a board-approved supervisor. Supervised experience must have occurred within the five calendar years immediately preceding the date of LCSW application. If supervision was completed in another jurisdiction, the social worker must have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the board accept alternate verification of supervision.

(D) Has passed the Advanced Generalist examination administered nationally by the ASWB.

(E) Licensees holding the Advanced Practitioner specialty recognition will continue to hold the specialty recognition as long as they renew timely and in accordance with board rules. Individuals under board-approved supervision plans for the Advanced Practitioner specialty recognition as of December 31, 2011 may complete the process. The board will discontinue accepting new board-approved supervision plans for the Advanced Practitioner specialty recognition after December 31, 2011.

(2) Independent Non-clinical Practice.

(A) Is currently licensed in the State of Texas as an LBSW or LMSW.

(B) While fully licensed as a social worker has had 3000 hours of board-approved supervised full-time social work experience over a minimum two-year period, but within a maximum four-year period or its equivalent if the experience was completed in another state. Board-approved supervised professional experience must comply with §781.404 of this title and all other applicable laws and rules.

(C) Has had a minimum of 100 hours of board-approved supervision, over the course of the 3000 hours of experience, with a board-approved supervisor. Supervised experience must have occurred within the 5 calendar years immediately preceding the date of application for IPR specialty recognition. If supervision was completed in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the board accept alternate verification.

(c) Applicants for a license must complete the board's jurisprudence examination and submit proof of completion at the time of application. The jurisprudence examination must have been completed no more than six months prior to the date of application.

*§781.402. Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition.*

(a) A person who has obtained a temporary license may not begin the supervision process toward independent non-clinical practice or independent clinical practice until the regular license is issued.

(b) An LMSW who plans to apply for the LCSW must:

(1) within 30 days of initiating supervision, submit to the board one clinical supervisory plan for each location of practice for approval by the board or executive director/designee;

(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead. In order for a plan to be approved, the position description or other relevant documentation must demonstrate that the duties of the position are clinical as defined in this chapter;

(3) submit a separate supervision verification form for each location of practice to the board for approval within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend that the supervisee is eligible to examine for LCSW, the supervisor must indicate such on the clinical supervision verification form and provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations as it evaluates the supervision verification submitted by the supervisee;

(4) submit a new supervisory plan within 30 days of changing supervisors or practice location; and

(5) submit an application for re-categorizing his/her licensure to Licensed Clinical Social Worker.

(c) An LMSW who plans to apply for the advanced practitioner specialty recognition must:

(1) submit one non-clinical supervisory plan for each location of practice to the board for approval by the board or executive director/designee within 30 days of initiating supervision;

(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead. In order for a plan to be approved, the position description must demonstrate that the duties of the position are social work;

(3) submit a separate supervision verification form for each practice location to the board for approval within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend that the supervisee is eligible to examine for advanced practice specialty recognition, the supervisor must indicate such on the non-clinical supervision verification form and provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations as it evaluates the supervision verification that the supervisee submits;

(4) submit a new supervisory plan within 30 days of changing supervisors or practice location; and

(5) upon completing and submitting documentation of the required non-clinical supervision, the LMSW must apply for the advanced practitioner specialty recognition.

(d) An LBSW or an LMSW who plans to apply for the Independent Practice Recognition must:

(1) submit one supervisory plan to the board for each location of practice for approval by the board or executive director/designee within 30 days of initiating supervision;

(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the LBSW or LMSW intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the LBSW or LMSW in the setting;

(3) submit a separate supervision verification form for each practice location to the board within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend that the supervisee is eligible for independent practice recognition, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations as it evaluates the supervision verification that the supervisee submits; and

(4) submit a new supervisory plan within 30 days of changing supervisors or practice location.

(e) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:

(1) submit one supervisory plan for each practice location to the board for approval by the board or executive director/designee within 30 days of initiating supervision;

(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;

(3) ensure that the supervisor submits reports to the board on a schedule determined by the board. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and

(4) notify the board immediately if there is a disruption in the supervisory relationship or change in practice location and submit a new supervisory plan within 30 days of the break or change in practice location.

(f) An LBSW or an LMSW who has been approved for a probationary license under supervision while participating in the AMEC program must follow the application and supervision requirements in §781.413 of this title (relating to Alternate Method of Examining Competency (AMEC) Program).

*§781.404. Recognition as a Board-approved Supervisor and the Supervision Process.*

(a) Types of supervision include:

(1) administrative or work-related supervision of an employee, contractor or volunteer that is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(2) clinical supervision of a Licensed Master Social Worker in a setting in which the LMSW is providing clinical services; the supervision may be provided by a Licensed Professional Counselor, Licensed Psychologist, Licensed Marriage and Family Therapist, Licensed Clinical Social Worker or Psychiatrist. This supervision is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(3) clinical supervision of a Licensed Master Social Worker, who is providing clinical services and is under a board-approved supervision plan to fulfill supervision requirements for achieving the LCSW; a Licensed Clinical Social Worker who is a board-approved supervisor delivers this supervision;

(4) non-clinical supervision of a Licensed Master Social Worker or Licensed Baccalaureate Social Worker who is providing non-clinical social work service toward qualifications for independent non-clinical practice recognition; this supervision is delivered by a board-approved supervisor;

(5) non-clinical supervision of a Licensed Master Social Worker who is providing non-clinical social work service toward qualifications for the LMSW-AP; this supervision is delivered by a board-approved supervisor;

(6) supervision of a probationary Licensed Master Social Worker or Licensed Baccalaureate Social Worker providing non-clinical services by a board-approved supervisor toward licensure under the AMEC program; or

(7) board-ordered supervision of a licensee by a board-approved supervisor pursuant to a disciplinary order or as a condition of new or continued licensure.

(b) A person who wishes to be a board-approved supervisor must file an application and pay the applicable fee.

(1) A board-approved supervisor must be licensed in good standing by the board as an LBSW, an LMSW, an LCSW, or be recognized as an Advanced Practitioner (LMSW-AP), or hold the equivalent social work license in another jurisdiction. The person applying for board-approved status must have practiced at his/her category of licensure for two years. The board-approved supervisor shall supervise only those supervisees who provide services that fall within the supervisor's own competency.

(2) The board-approved supervisor is responsible for the social work services provided within the supervisory plan.

(3) The board-approved supervisor must have completed a supervisor's training program acceptable to the board.

(4) The board-approved supervisor must complete three hours of continuing education every biennium in supervision theory, skills, strategies, and/or evaluation.

(5) The board-approved supervisor must designate at each license renewal that he/she wishes to continue board-approved supervisor status.

(6) The board-approved supervisor must submit required documentation and fees to the board as listed in §781.316 of this title (relating to Fees).

(7) When a licensee is designated a board-approved supervisor, he or she may perform the following supervisory functions.

(A) An LCSW may supervise clinical experience toward the LCSW license, non-clinical experience toward the Advanced Practitioner specialty recognition, non-clinical experience toward the Independent Practice Recognition (non-clinical), a licensee under probationary initial or continued licensure, board-ordered probated suspension, and probationary license holders under the AMEC program.

(B) An LMSW-AP may supervise non-clinical experience toward the Advanced Practitioner specialty recognition; non-clinical experience toward the non-clinical Independent Practice Recognition; a licensee under probationary initial or continued licensure; board-ordered probated suspension for non-clinical practitioners; and probationary license holders under the AMEC program.

(C) An LMSW with the Independent Practice Recognition (non-clinical) who is a board-approved supervisor may supervise an LBSW's or LMSW's non-clinical experience toward the non-clinical Independent Practice Recognition; an LBSW or LMSW under probationary initial or continued licensure; an LBSW or LMSW (non-clinical) under board-ordered probated suspension; and a probationary license holder under the AMEC program; however, an LMSW who does not hold the independent practice recognition may only supervise probationary license holders under the AMEC program in an employment setting.

(D) An LBSW with the non-clinical Independent Practice Recognition who is a board-approved supervisor may supervise: an LBSW's non-clinical experience toward the non-clinical Independent Practice Recognition; an LBSW under probationary initial or continued licensure; an LBSW under board-ordered probated suspension; and a probationary LBSW license holder under the AMEC program; however, an LBSW who does not hold the independent practice recognition may only supervise probationary license holders under the AMEC program in an employment setting.

(8) On receiving the licensee's application to be a board-approved supervisor, as well as fee and verification of qualifications, the board will issue a letter notifying the licensee that the licensee is a board-approved supervisor.

(9) The approved supervisor must renew the approved supervisor status in conjunction with the biennial license renewal. The approved supervisor may surrender supervisory status by documenting the choice on the appropriate board renewal form and subtracting the supervisory renewal fee from the renewal payment. If a licensee who has surrendered supervisory status desires to regain supervisory status, the licensee must reapply and meet the current requirements for approved supervisor status.

(10) A supervisor must maintain the qualifications described in this section while he or she is providing supervision.

(11) A board-approved supervisor who wishes to provide any form of board-approved or board-ordered supervision must comply with the following.

(A) The supervisor is obligated to keep legible, accurate, complete, signed supervision notes and must be able to produce such documentation for the board if requested. The notes shall document the content, duration, and date of each supervision session.

(B) A social worker may contract for supervision with written approval of the employing agency. A copy of the approval must accompany the supervisory plan submitted to the board.

(C) A board-approved supervisor may not charge or collect a fee or anything of value from his or her employee or contract employee for the supervision services provided to the employee or contract employee.

(D) Before entering into a supervisory agreement, the supervisor shall be aware of all conditions of exchange with the clients served by her or his supervisee. The supervisor shall not provide supervision if the supervisee is practicing outside the authorized scope of the license. If the supervisor believes that a social worker is practicing outside the scope of the license, the supervisor shall make a report to the board.

(E) A supervisor shall not be employed by or under the employment supervision of the person who he or she is supervising.

(F) A supervisor shall not be a family member of the person being supervised.

(G) A supervisee must have a clearly defined job description and responsibilities.

(H) A supervisee who provides client services for payment or reimbursement shall submit billing to the client or third-party payers which clearly indicates the services provided and who provided the services, and specifying the supervisee's licensure category and the fact that the licensee is under supervision.

(I) If either the supervisor or supervisee has an expired license or a license that is revoked or suspended during supervision, supervision hours accumulated during that time will be accepted only if the licensee appeals to and receives approval from the board.

(J) A licensee must be a current board-approved supervisor in order to provide professional development supervision toward licensure or specialty recognition, or to provide board-ordered supervision to a licensee. Providing supervision without having met all requirements for current, valid board-approved supervisor status may be grounds for disciplinary action against the supervisor.

(K) The supervisor shall ensure that the supervisee knows and adheres to the Code of Conduct and Professional Standards of Practice of this chapter.

(L) The supervisor and supervisee shall avoid forming any relationship with each other that impairs the objective, professional judgment and prudent, ethical behavior of either.

(M) Should a supervisor become subject to a board disciplinary order, that person is no longer a board-approved supervisor and must so inform all supervisees, helping them to find alternate supervision.

(N) The board may deny, revoke, or suspend board-approved supervisory status following a fair hearing for violation of the Act or rules, according to the department fair hearing rules. Continuing to supervise after the board has denied, revoked, or suspended board-approved supervisor status, or after the supervisor's supervisory status expires, may be grounds for disciplinary action against the supervisor.

(O) If a supervisor's board-approved status is expired, suspended, or revoked, the supervisor shall refund all supervisory fees the supervisee paid after the date the supervisor ceased to be board-approved.

(P) A supervisor is responsible for developing a well-conceptualized supervision plan with the supervisee, and for updating that plan whenever there is a change in agency of employment, job function, goals for supervision, or method by which supervision is provided.

(Q) All board-approved supervisors shall have taken a board-approved supervision training course by January 1, 2014 in order to renew board-approved supervisor status. The board recognizes that many licensees have had little, if any, formal education about super-

vision theories, strategies, problem-solving, and accountability, particularly LBSWs who may supervise licensees toward the IPR. Though some supervisors have functioned as employment supervisors for some time and have acquired practical knowledge, their practical supervision skills may be focused in one practice area, and may not include current skills in various supervision methods or familiarity with emerging supervisory theories, strategies, and regulations. Therefore, the board values high-quality, contemporary, multi-modality supervision training to ensure that all supervisors have refreshed their supervisory skills and knowledge in order to help supervisees practice safely and effectively.

(12) A board-approved supervisor who wishes to provide supervision towards licensure as an LCSW or towards specialty recognition in Independent Practice (IPR) or Advanced Practitioner (LMSW-AP), which is supervision for professional growth, must comply with the following.

(A) Supervision toward licensure or specialty recognition may occur in one-on-one sessions; in a combination of individual and group sessions; or in board-approved combinations of supervision in the same geographical location, supervision via audio and visual web technology, and other electronic supervision techniques.

(B) Supervision groups shall have no fewer than two members and no more than six.

(C) Supervision shall occur in proportion to the number of actual hours worked, with a base line of one hour of supervision for every 40 hours worked. If the supervisee works full-time, supervision shall occur on average at least twice a month and for no less than four hours per month; if the supervisee works part-time (at least 20 hours per week), supervision shall occur on average at least once a month and no less than two hours per month. Supervisory sessions shall last at least one hour and no more than two hours per session.

(D) The board considers supervision toward licensure or specialty recognition to be supervision which promotes professional growth. Therefore, all supervision formats must encourage clear, accurate communication between the supervisor and the supervisee, including case-based communication that meets standards for confidentiality. Though the board favors supervision formats in which the supervisor and supervisee are in the same geographical place for a substantial part of the supervision time, the board also recognizes that some current and future technology, such as using reliable, technologically-secure computer cameras and microphones, can allow personal face-to-face, though remote, interaction, and can support professional growth. Supervision formats must be clearly described in the supervision plan, explaining how the supervision strategies and methods of delivery meet the supervisee's professional growth needs and ensure that confidentiality is protected. The plan must be approved by the board.

(E) Supervision toward licensure or specialty recognition must extend over a full 3000 hours over a period of 24 to 48 months.

(F) The supervisor and the supervisee bear professional responsibility for the supervisee's professional activities.

(G) If the supervisor determines that the supervisee lacks the professional skills and competence to practice social work under a regular license, the supervisor shall develop and implement a written remediation plan for the supervisee.

(H) Board-approved supervised professional experience towards licensure must comply with §781.401 of this title (relating to Qualifications for Licensure) and §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition) of this title and all other applicable laws and rules.

(13) A board-approved supervisor who wishes to provide supervision required as a result of a board order must comply with relevant provisions of §781.413 of this title (relating to Alternate Method of Examining Competency (AMEC) Program), §781.610 of this title (relating to Due Process Following Violation of an Order) and §781.806 of this title (relating to Probation) of this title, all other applicable laws and rules, and/or the following.

(A) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:

*(i)* submit one supervisory plan for each practice location to the board for approval by the board or executive director/designee within 30 days of initiating supervision;

*(ii)* submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;

*(iii)* ensure that the supervisor submits reports to the board on a schedule determined by the board. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and

*(iv)* notify the board immediately if there is a disruption in the supervisory relationship or change in practice location and submit a new supervisory plan within 30 days of the break or change in practice location.

(B) The supervisor who agrees to provide board-ordered supervision of a licensee who is under board disciplinary action must understand the board order and follow the supervision stipulations outlined in the order. The supervisor must address with the licensee those professional behaviors that led to board discipline, and must help to remediate those concerns while assisting the licensee to develop strategies to avoid repeating illegal, substandard, or unethical behaviors.

(C) Board-ordered and mandated supervision timeframes are specified in the board order.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2011.

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Timothy Brown
Chair
Texas State Board of Social Worker Examiners
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For further information, please call: (512) 458-7111 x6972

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## SUBCHAPTER E. LICENSE RENEWAL AND CONTINUING EDUCATION

**22 TAC §§781.501 - 781.517**

STATUTORY AUTHORITY

The new sections are authorized by the Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties; and Texas Occupations Code, §502.203, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter; and Texas Occupations Code, Chapter 53, concerning criminal history evaluation. Review of the sections implements Government Code, §2001.039.

*§781.511. Requirements for Continuing Education Providers.*

(a) A provider must be approved under this section to offer continuing education programs.

(b) A person seeking approval as a continuing education provider shall apply using board forms and include the continuing education provider application fee. Governmental agencies shall be exempt from paying this fee.

(c) Entities that receive automatic status as approved providers without applying or paying fees include accredited colleges and universities; a national or statewide association, board or organization representing members of the social work profession; nationally accredited health or mental health facilities; or a person or agency approved by any state or national organization in a related field such as medicine, law, psychiatry, psychology, sociology, marriage and family therapy, professional counseling, and similar fields of human service practice.

(d) The applicant shall certify on the application that all programs that the provider offers for board-approved credit hours will comply with the criteria in this section; and the provider will be responsible for verifying attendance at each program and provide an attendance certificate as set forth in subsection (k) of this section.

(e) A program the provider offers for board-approved credit hours shall advance, extend, and enhance the licensees' professional social work skills and knowledge; be developed and presented by persons who are appropriately knowledgeable in the program's subject matter and training techniques; specify the course objectives, course content, teaching methods, and number of credit hours; specify the number of credit hours in ethics and values separately and as part of the total hours credited.

(f) The provider must document each program's compliance with this section, maintaining that documentation for three years.

(g) Department staff shall review the continuing education provider application and notify the applicant of any deficiencies or grant approval, assigning the continuing education provider approval number which shall be noted on all certificates.

(h) Each continuing education program shall provide participants an evaluation instrument which may be completed on-site or returned via the web or by mail. The provider and the instructor shall review the evaluation outcomes and consider those outcomes in revising subsequent programs, keeping all evaluations for three years and allowing the board to review the evaluations on request.

(i) The provider will supply a list of subcontractors as part of the renewal process or upon request.

(j) To maintain continuing education provider approval, each provider shall annually apply to renew provider status and pay applicable fees.

(k) It is the provider's responsibility to provide each program participant with a legible certificate of attendance after the program ends. The certificate shall include the provider's name, approval number, and expiration date of the provider's approved status; the participant's name; the program title, date, and place; the credit hours earned, including the ethics hours credited; the provider's signature or that of the provider's representative; and the board contact information.

(l) The provider is responsible for assuring that the licensee receives credit only for time actually spent in the program.

(m) If the provider fails to comply with these requirements, the board, after notice to the provider and due process hearing, may revoke the provider's approval status.

(n) The board may evaluate any provider or applicant at any time to ensure compliance with requirements of this section.

(o) Complaints regarding continuing education programs offered by approved providers may be submitted in writing to the executive director.

(p) A program offered by a provider for credit hours in ethics shall meet the minimum course requirements for an ethics course approved by the board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER F. COMPLAINTS AND VIOLATIONS

**22 TAC §§781.601 - 781.610**

STATUTORY AUTHORITY

The new sections are authorized by the Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties; and Texas Occupations Code, §502.203, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter; and Texas Occupations Code, Chapter 53, concerning criminal history evaluation. Review of the sections implements Government Code, §2001.039.

*§781.602. Disciplinary Action and Notices.*

(a) The board shall revoke, suspend, suspend on an emergency basis, or deny a license or specialty recognition, place on probation a person whose license or specialty recognition has been suspended, or reprimand a person with a license or specialty recognition for:

(1) violating any provision of the Act or any board rule;

(2) failing to cooperate in a complaint investigation filed under this chapter's provisions;

(3) failing to comply with any board-ordered action;

(4) exhibiting physical or mental incompetency, as determined by the board, to perform social work;

(5) providing false or misleading information to the board regarding qualifications for licensure or renewal or in response to a board inquiry;

(6) violating any of the grounds described in the Act, §505.451;

(7) violating the law or rules of another health or mental health profession resulting in disciplinary action by that profession's regulatory body;

(8) violating the law, rules, or policies of a governmental agency related to social work practice resulting in disciplinary action by the governmental agency;

(9) violating a board order; or

(10) engaging in conduct that discredits or tends to discredit the social work profession.

(b) Prior to instituting formal disciplinary proceedings against a licensee, the board shall notify the licensee in writing by certified mail, return receipt requested or registered mail. The notice of violation letter will include the facts or conduct alleged to warrant revocation, suspension, or reprimand and the severity level from the sanction guide. The licensee shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter, including the opportunity for an informal conference. A licensee's opportunity for an informal conference under this subsection shall satisfy the requirement of the APA, §2001.054(c).

(c) The licensee or applicant must request, in writing, a formal hearing within 10 days of receiving the notice, or the right to a hearing shall be waived and the license or specialty recognition shall be denied, revoked, suspended, probated, or reprimanded.

(d) Receipt of a notice under subsection (b) or (c) of this section is presumed to occur on the tenth day after the notice is mailed to the last address known to the board unless another date is reflected on a United States Postal Service return receipt or other official receipt.

(e) The licensee will be considered to have received notice of board disciplinary action if the notice is mailed to the last address provided in writing to the board by the licensee.

(f) If a notice is mailed to the last known address of the licensee, and the licensee fails to respond to the notice within 10 days from receipt of the notice, the licensee will be considered to have waived his or her right to a hearing in the matter.

(g) If it appears to the board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to social work practice, the board, after notice and opportunity for a hearing as described in this section, may issue a cease and desist letter prohibiting the person from engaging in the activity. A violation of an order under this subsection constitutes grounds for the board to impose an administrative penalty.

*§781.603. Complaint Procedures.*

(a) A person wishing to report that a licensee has allegedly violated the Act or this chapter may notify the department staff in writing, by telephone, by email or in person.

(b) The department staff is responsible for logging in complaints as they are received and investigating them.

(c) The board chairperson will appoint an Ethics Committee to review the department's investigations, determine if licensees have violated the law or rules, and decide what sanctions, if any, to impose.

(d) The board office shall not accept a complaint if the official form is not filed within five years of the date that the professional-client relationship involved in the alleged violations ended, or five years from the date the complainant learned that the behavior of the social worker violated the rules and/or law. If the client was a minor at the time of the alleged violation, this time limitation does not begin until the client reaches the age of 18 years. A complainant shall be notified of the non-acceptance of untimely complaints.

(e) The board may waive the time limitation in cases of egregious acts or continuing threats to public health or safety when presented with specific evidence that warrants such action.

(f) Department staff will acknowledge in writing that they have received the complaint.

(g) The executive director initially reviews the complaint to determine jurisdiction. If a complaint appears to be within the board's jurisdiction, the executive director shall decide whether to authorize sending a copy of the complaint to the respondent and requesting a response. If the executive director does not authorize written notification of the respondent, the complaint will be referred for an investigation and the assigned investigator will determine whether the respondent will be notified by letter, phone call, site visit, or some other appropriate means. If the complaint is against a person licensed by another board, the department staff will forward the complaint to that board not later than the 15th day after the date the agency determines that the information shall be referred to the appropriate agency as provided in Government Code, Chapter 774, relating to exchange of information between regulatory agencies.

(h) If the allegations clearly do not fall within the board's jurisdiction, the executive director may close the complaint and will present the case to the Ethics Committee at the committee's next meeting. The Ethics Committee retains the right to request full disclosure of any case closed and order a comprehensive hearing of the complaint.

(i) If the allegations in the complaint are within the board's jurisdiction and sufficient for investigation, the executive director shall:

(1) evaluate the threat to public health and safety documented by the complaint;

(2) establish an appropriate plan and schedule for its investigation to be noted in the complaint file;

(3) instruct agency staff to send a notice to the complainant acknowledging that the complaint was received, unless the complaint was anonymous; and

(4) report the status of all continuing investigations to the complainant and the licensee or applicant periodically.

(j) The department staff will begin investigating the complaint by requesting statements and evidence from all parties; by referring the investigation to a department investigator; or by enlisting the service of a private investigator. If using a private investigator is appropriate, department staff will so inform the board.

(k) If an investigation uncovers evidence of a criminal act, the executive director or the Ethics Committee will determine whether notifying law enforcement is appropriate, and if so, give such approval to the appropriate department staff for implementation. The complaint process will continue to its completion unless a law enforcement agency requests in writing that action be delayed, clarifying the reason for delay, and the date by which that agency plans to take action on the case. The executive director will request the law enforcement agency provide timely updates on the case progress.

(l) The executive director or the investigator assigned to the case will notify the subject of the complaint of the allegations either in writing, by phone or in person. The subject is required to provide a sworn response to the allegations within fifteen days of that notice. Failure to respond to the allegations within the 15 days is evidence of failure to cooperate with the investigation and subject to disciplinary action.

(m) The Ethics Committee will review complaints to ensure that complaint investigations are being handled in a timely manner and that complaints are not dismissed without appropriate consideration. The Ethics Committee will also ensure that any person who files a complaint has an opportunity to explain the allegations made in the complaint, and that any issues related to complaints which arise under the Act, or this chapter, are resolved.

(n) The Ethics Committee shall determine whether to dismiss a complaint as unsubstantiated, whether a violation exists, and what disciplinary action to take.

(o) If a violation is found but it does not seriously affect the health and safety of clients or other persons, the committee may resolve the complaint by informal methods such as a cease and desist letter or an informal agreement with the violator to correct the violation.

(p) If the complaint is not resolved by the committee, the committee may recommend that disciplinary action or other appropriate action as authorized by law be taken, including injunctive relief or civil penalties. If the investigation produces evidence of possible violations not described in the complaint, a separate complaint will be opened regarding such alleged violations. Notice will be given to the licensee that the new complaint will be heard at a subsequent meeting of the Ethics Committee. The committee may proceed with the action regarding the original complaint.

(q) If no violation exists or the complaint is dismissed as unsubstantiated, the department will notify the complainant and the licensee or applicant in writing of the finding. The notice may include a statement of issues and recommendations that the committee wishes the subject of the complaint to consider.

(r) If the executive director receives credible evidence that a licensee is engaging in acts that pose an immediate, significant threat of physical or emotional harm to the public, the executive director shall consult with the board chair or Ethics Committee members to authorize an emergency suspension of the license.

(s) Once a complaint has been dismissed by the committee, it cannot be reopened. If new significant information emerges about the circumstances of the dismissed complaint, a new complaint may be opened.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Timothy Brown
Chair
Texas State Board of Social Worker Examiners
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Proposal publication date: August 6, 2010
For further information, please call: (512) 458-7111 x6972

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## SUBCHAPTER G. FORMAL HEARINGS

**22 TAC §§781.701 - 781.704**

STATUTORY AUTHORITY

The new sections are authorized by the Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties; and Texas Occupations Code, §502.203, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter; and Texas Occupations Code, Chapter 53, concerning criminal history evaluation. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Timothy Brown
Chair
Texas State Board of Social Worker Examiners
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For further information, please call: (512) 458-7111 x6972

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## SUBCHAPTER H. SANCTION GUIDELINES

**22 TAC §§781.801 - 781.808**

STATUTORY AUTHORITY

The new sections are authorized by the Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties; and Texas Occupations Code, §502.203, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter; and Texas Occupations Code, Chapter 53, concerning criminal history evaluation. Review of the sections implements Government Code, §2001.039.

*§781.806. Probation.*

If probation is ordered or agreed to, the following terms may be required.

(1) General conditions of probation.

(A) The licensee shall obey all federal, state and local laws and rules governing social work practice in this state.

(B) Under penalty of perjury, the licensee shall submit periodic reports as the board requests on forms provided by the board, stating whether the licensee has complied with all conditions of probation.

(C) The licensee shall comply with the board's probation monitoring program.

(D) The licensee shall appear in person for interviews with the board or its designee at various intervals and with reasonable notice.

(E) If the licensee leaves this state to reside or to practice outside the state, the licensee must notify the board in writing of the dates of departure and return. Periods of practice outside this state will not count toward the time of this probationary period. The social work licensing authorities of the jurisdiction to which the licensee is moving or has moved must be promptly notified of the licensee's probationary

status in this state. The probationary period will resume when the licensee returns to the state to reside or practice.

(F) If the licensee violates probation in any respect, the board, after giving formal notice and the opportunity to be heard, may revoke the licensee's license and specialty recognition or take other appropriate disciplinary action. The period of probation shall be extended until the matter is final.

(G) The licensee shall promptly notify in writing all settings in which the licensee practices social work of his or her probationary status.

(H) While on probation, the licensee shall not act as a supervisor or gain any hours of supervised practice required for any board-issued license.

(I) The licensee is responsible for paying the costs of complying with conditions of probation.

(J) The licensee shall comply with the renewal requirements in the Act and the board rules.

(K) A licensee on probation shall not practice social work except under the conditions described in the probation order.

(L) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:

*(i)* submit one supervisory plan for each practice location to the board for approval by the board or executive director/designee within 30 days of initiating supervision;

*(ii)* submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;

*(iii)* ensure that the supervisor submits reports to the board on a schedule determined by the board. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and

*(iv)* notify the board immediately if there is a disruption in the supervisory relationship or change in practice location and submit a new supervisory plan within 30 days of the break or change in practice location.

(2) Special Conditions. At the board's discretion, one or more special conditions of probation may appear in the board's disciplinary order that places a licensee on probation. Those special conditions and example wording are described in the following subparagraphs of this paragraph.

(A) Actual Suspension. As part of probation, the license is suspended for a period of (example: one) year beginning the effective date of this order.

(B) Drug/Medication Use. The licensee shall abstain completely from using or possessing controlled substances and dangerous drugs as defined by law, or any drugs requiring a prescription except those medications which a licensed physician lawfully prescribes for a bona fide illness or condition.

(C) Alcohol. The licensee shall abstain completely from using alcoholic beverages.

(D) Body Fluid or Hair Follicle Testing. The licensee shall immediately submit to appropriate testing, at the licensee's cost, upon the board's written request or order.

(E) Rehabilitation Program. Within (example: 30) days of the effective date of the order, the licensee shall submit to the board for its prior approval a rehabilitation program in which the licensee shall participate at least weekly for at least (example: 50) weeks of the calendar year for the duration of probation. In the periodic reports to the board, the licensee shall document continuing participation in this program, including the dates of the weekly meetings attended and the address of each meeting. At the end of the required period, the rehabilitation program director shall document to the board that the license has completed the program and has made arrangements for appropriate follow-up.

(F) Community Service. Within (example: 60) days of the effective date of the order, the licensee shall submit to the board for its prior approval a community service program in which the licensee shall provide free regular social work services to a community or charitable facility or agency for at least (example: 20) hours a month for the first (example: 24) months of probation.

(G) Medical Evaluation Treatment. Within (example: 30) days of the effective date of the order, and periodically thereafter as the board or its designee may require, the licensee shall undergo a medical evaluation by a licensed physician who shall furnish a medical report to the board or its designee. If the board or its designee requires the licensee to undergo medical treatment, the licensee shall, within (example: 30) days of the requirement notice, submit to the board for its prior approval the name and qualifications of a physician of the licensee's choice. Upon the board's approval of the treating physician, the licensee shall undergo and continue medical treatment until further notice from the board. The licensee shall have the treating physician submit periodic reports to the board as the board directs. In cases where the evidence demonstrates that medical illness or disability was a contributing cause of the violations, the licensee shall not engage in the practice of social work until the board notifies the licensee that the board has determined that the licensee is medically fit to practice safely.

(H) Psychosocial/Psychological/Psychiatric Evaluation. Within (example: 30) days of the effective date of the decision, and periodically thereafter as required by the board or its designee, the licensee shall undergo evaluation by a licensed professional (social worker, psychologist, or psychiatrist) selected by the board. The evaluator shall furnish a written report to the board or its designee regarding the licensee's judgment and ability to function independently and safely as a social worker and any other information the board may require. The licensee shall pay all evaluation costs. The licensee shall execute a release of information authorizing the evaluator to release all information to the board. The board will treat the evaluation as confidential. If the evidence demonstrates that physical illness or mental illness was a contributing cause of the violations, the licensee shall not engage in the practice of social work until the board determines that the licensee is medically fit to practice safely and so notifies the licensee.

(I) Ethics Course. Within (example: 60) days of the effective date of the order, the licensee shall select and submit to the board or its designee for prior approval a course in (example: ethics), which the licensee shall take and successfully complete as directed by the board.

(J) Supervision of the Licensee's Practice. Within (example: 30) days of the effective date of this order, the licensee shall submit to the board for its prior approval the name and qualifications of three proposed supervisors. Each proposed supervisor shall be licensed in good standing and be a board-approved supervisor with expertise in the licensee's field of practice. The supervisor must review and maintain a copy of the board order and must ensure that the supervisory content relates to the licensee's rehabilitation and fitness for practice. The supervisor shall submit to the board quarterly written reports (or other time periods the board may specify), verifying that the supervisor and supervisee have met together in the same geographical location to engage in required supervision of at least one hour per week (or other time periods the board may specify), in individual face-to-face meetings, and including an evaluation of the licensee's performance. The licensee will bear all supervision costs and is responsible for assuring that the required reports are filed in a timely fashion. The licensee shall give the supervisor access to the licensee's fiscal and client records. The supervisor shall be independent, with no current or prior business, professional or personal relationship with the licensee. The licensee shall not practice until the board has approved the designated supervisor and so notified the licensee. If the supervisor ceases supervision, the licensee shall not practice until the board has approved a new supervisor. The supervisor and licensee shall inform the board in writing within 10 business days of supervision termination, or any substantive change to the supervision plan; these changes are subject to the board's approval. Board-ordered supervision shall comply with relevant requirements of §781.404 of this title (relating to Recognition as a Board-approved Supervisor and the Supervision Process) as well as all other laws and rules.

(K) Psychotherapy. Within (example: 60) days of the effective date of the order, the licensee shall submit to the board for its prior approval the name and qualifications of one or more therapists of the licensee's choice. The therapist shall possess a valid license and shall have had no current or prior business, professional or personal relationship with the licensee. Upon the board's approval, the licensee shall undergo and continue treatment, for which the licensee pays all costs, until the board determines that no further psychotherapy is necessary. The licensee shall execute a release of information authorizing the therapist to divulge information to the board, and will have the treating psychotherapist submit periodic reports as the board requires. If the therapist believes the licensee cannot safely continue to render services, the therapists will notify the board immediately.

(L) Education. The licensee shall successfully complete any remedial education the board requires.

(M) Take and Pass Licensure Examinations. The licensee shall take and pass the licensure examination currently required of new applicants for the license possessed by the licensee. The licensee shall pay the established examination fee.

(N) Peer Assistance Program. Within (example: 30) days of the effective date of the order, the licensee shall participate in a board-approved Peer Assistance Program in which the licensee shall participate at least (example: weekly) for at least (example: 50) weeks of the calendar year for the duration of probation. In the periodic reports to the board, the licensee shall document continuing participation in this program, including the dates of the meetings attended and the address of each meeting. The program shall also submit periodic progress reports and a final disposition report concerning whether the licensee completed the program and has made arrangements for appropriate follow-up. If a licensee does not complete the program, the board or board committee will determine an appropriate sanction.

(O) Other Conditions. The board may order other terms of probation as may be appropriate.

*§781.808. Peer Assistance Program.*

(a) The board shall establish criteria for a peer assistance program to help impaired professionals. Any peer assistance program wishing to serve licensees will submit evidence to the board that the program meets board criteria. The board may approve a peer assistance program, and may rescind such approval.

(b) The board has the authority to request that a licensee be evaluated by an appropriate substance abuse or mental health provider, and reserves the right to choose the provider. The licensee will pay the costs of such evaluation directly to the provider. The board may use the evaluation results in determining the licensee's fitness to practice.

(c) The board will recognize a board-approved peer assistance program to serve an impaired licensee if the board or a board committee approves such intervention or makes such intervention a condition of board-ordered sanction, as a condition of continued licensure, or if the licensee acknowledges impairment and requests peer assistance services.

(d) The board does not waive authority to conduct ethics investigations or impose sanctions against a licensee who is in a peer assistance program.

(e) Any licensee who enters evaluation, treatment, or monitoring by a board-approved peer assistance program is obligated to pay the costs incurred by this intervention directly to the peer assistance program. Neither the board nor the department will collect such costs from the licensee, nor serve as an intermediary for such payments.

(f) The board-approved peer assistance program shall submit reports of the licensee's progress in a time frame that the board specifies. The program shall also submit a final disposition report concerning whether the licensee completed the program. If the licensee does not complete the program, the board or board committee will determine an appropriate sanction.

(g) A licensee who knows or suspects that another licensee under the board's jurisdiction is impaired by alcohol, chemical, or mental illness is required to report this information to the board within 30 days for investigation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Timothy Brown
Chair
Texas State Board of Social Worker Examiners
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# TITLE 28. INSURANCE

## PART 1. TEXAS DEPARTMENT OF INSURANCE

### CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

## SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
## DIVISION 8. RATES

**28 TAC §5.4701**

The Commissioner of Insurance (Commissioner) adopts new §5.4701 to implement amendments to §2210.352 and §2210.354 of the Insurance Code, under HB 4409, 81st Legislature, 2009, Regular Session, concerning making written requests for additional supporting information related to the Texas Windstorm Insurance Association's (Association) annual rate filing under §2210.352, except a filing under §2210.352(a-1), and the means and time periods for interested persons to review and provide written comments and information related to such annual rate filings. Section 5.4701 is adopted without changes to the proposed text published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6225).

REASONED JUSTIFICATION. The new section is necessary to establish procedures and time periods to implement the Insurance Code §2210.352(b) requirement that, except as provided by the Insurance Code §2210.352(a-1), interested persons must be provided with a reasonable opportunity to review the Association's annual rate filing, obtain copies of the filing, and to submit to the Commissioner written comments or information related to the filing. The section is also necessary to specify the time period for interested persons to request additional supporting information related to the annual rate filing under the Insurance Code §2210.354.

The basic requirement for requesting and providing additional supporting information has existed in the Insurance Code §2210.354 for a number of years prior to the HB 4409 amendments. Over those years this requirement has not generated significant questions as to what constitutes valid additional supporting information. For this reason the section does not define what constitutes a valid request for additional supporting information beyond the requirement in §5.4701(c) that "[A] written request for additional supporting information must meet the requirements of the Insurance Code §2210.354 and be submitted as required in the Insurance Code §2210.354 and this section."

The Insurance Code §2210.352 was significantly modified by the adoption of HB 4409, 81st Legislature, 2009 Regular Session. The section no longer sets forth requirements for a public hearing after notice of the rate filing. Further, the time period for Commissioner's review and decision to approve or disapprove the rate filing has been reduced from November 15 to October 15 of the year in which the filing is made. However, the section still provides that, except for a filing under the Insurance Code §2210.352(a-1), the Commissioner shall provide all interested persons with a reasonable opportunity to review the filing, obtain a copy of the filing, and submit written comments and information related to the filing. To fulfill that legislative intent, §5.4701 establishes a procedure for providing interested persons with reasonable notice of the rate filing, information on how to obtain a copy of the rate filing, and a time frame for submitting comments on the rate filing. Section 5.4701(d) establishes the requirement that all comments related to the annual rate filing must be submitted no later than October 1 of the year in which the filing is made. The specific submission date, which may need to be extended if it falls on a weekend or holiday, will be specified in the notice issued pursuant to §5.4701(a). It is necessary to establish a date for the submission of comments and information because the Insurance Code §2210.352(c) requires the Commissioner to approve or disapprove the Association's annual rate filing not later than October 15 of the year in which the filing is made. The October 1st date will provide the Commissioner with a necessary time period to complete the review of the annual rate filing and all submitted written comments and information and prepare an order approving or disapproving the Association's annual rate filing.

The Insurance Code §2210.354 was also amended by HB 4409. Amended §2210.354(a)(2) directs the Commissioner to adopt by rule the time period for an interested person to request additional supporting information related to the Association's annual rate filing, other than a rate filing made under the Insurance Code §2210.352(a-1). This time period is constrained by a new requirement in the Insurance Code §2210.354(c) that the Commissioner must submit these requests for additional supporting information to the Association not later than the 21st day after the date the Department receives the Association's annual rate filing. Section 5.4701(c) establishes a time period for interested persons to submit a written request for additional supporting information within the time period required for the Department to compile and timely submit the requests to the Association. This period is the earlier of September 1, of the year in which the filing is made or 16 days after the date that the filing is received. The specific submission date, which may need to be extended if it falls on a weekend or holiday, will be specified in the notice issued pursuant to §5.4701(a). This period will allow the Department sufficient time to compile the requests and submit them to the Association within the 21-day period required by the Insurance Code §2210.354(c). The 16-day period is selected because September 1 is 16 days after August 15. Because the Association may make its annual rate filing before August 15, reliance only on the September 1st date might create a problem concerning compliance with the Insurance Code §2210.354(c) if the Association made the annual rate filing prior to August 15. Thus, the subsection allows for calculation of an alternative date for submission of requests for additional supporting information, but maintains the 16-day period reflected in the September 1 date.

HOW THE SECTION WILL FUNCTION. New §5.4701(a) establishes that the Department shall provide notice of the Association's annual rate filing. The notice shall be posted on the Department's website and with the Secretary of State. The notice shall provide interested persons information on how to obtain a copy of the filing. Additionally, the notice will provide specific dates by which written requests for additional supporting information and written comments or information related to the filing must be submitted. The parameters for determining these submission dates are addressed in subsections (c) and (d) of §5.4701. Further, the notice shall provide the mail, delivery, and electronic addresses to which these requests, comments, and information may be delivered.

Section 5.4701(b) establishes that the written requests for additional supporting information and written comments or information related to the filing must be delivered to the Office of the Chief Clerk no later than 5:00 p.m. on the dates specified in the notice issued pursuant to subsection (a) of §5.4701.

Section 5.4701(c) provides that a written request for additional supporting information must meet the requirements of the Insurance Code §2210.354 and be submitted as required in the Insurance Code §2210.354 and §5.4701. Subsection (c) further establishes the time period for submitting a written request

for additional information as required by the Insurance Code §2210.354(a)(2). This period is the earlier of September 1, of the year in which the filing is made or 16 days after the date that the filing is received. The specific submission date, which may need to be extended if it falls on a weekend or holiday, will be specified in the notice issued pursuant to §5.4701(a).

Section 5.4701(d) establishes the requirement that all comments related to the annual rate filing must be submitted no later than October 1 of the year in which the filing is made. The specific submission date, which may need to be extended if it falls on a weekend or holiday, will be specified in the notice issued pursuant to §5.4701(a).

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The department did not receive any comments on the published proposal.

STATUTORY AUTHORITY. The new section is adopted under the Insurance Code §§2210.008, 2210.352, 2210.354, and 36.001. Section 2210.008(b) authorizes the Commissioner to adopt reasonable and necessary rules in the manner prescribed in Subchapter A, Chapter 36, Insurance Code. Section 2210.352(b) requires the Commissioner to provide persons interested in the Association's annual rate filing, other than a rate filing under the Insurance Code §2210.352(a-1) to have an opportunity to review the rate filing, obtain a copy of the rate filing, and to provide the Commissioner with written comments and information related to the rate filing. Section 2210.354(a) requires the Commissioner to establish a time period for persons interested in the Association's annual rate filing, other than a rate filing under the Insurance Code §2210.352(a-1) to submit written requests for additional information related to the Association's rate filing. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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# TITLE 34. PUBLIC FINANCE

## PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

### CHAPTER 9. PROPERTY TAX ADMINISTRATION

### SUBCHAPTER L. PROCEDURES FOR PROTESTING PRELIMINARY FINDINGS OF TOTAL TAXABLE VALUE

**34 TAC §§9.4301 - 9.4313**

The Comptroller of Public Accounts adopts the repeal of §§9.4301 - 9.4313 concerning Subchapter L, Procedures for Protesting Preliminary Findings of Total Taxable Value, to be replaced with new §§9.4301 - 9.4317 in renamed Subchapter L, Procedures for Protesting Comptroller Property Value Study and Audit Findings, without changes to the proposed text as published in the November 19, 2010, issue of the *Texas Register* (35 TexReg 10182).

The repeal of §§9.4301 - 9.4313 and adoption of new §§9.4301 - 9.4317 are, in part, the result of a rule review of Texas Administrative Code, Title 34, Part 1, Chapter 9, Subchapter L, conducted by the comptroller. The rule review was performed pursuant to Government Code, §2001.039 and resulted in a determination that the reasons for initially adopting §§9.4301 - 9.4313 continue to exist. Sections 9.4301 - 9.4313 are being repealed and replaced to provide added clarification to and improve efficiency of the protest process.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Government Code, §403.303(c) and (e) which provide for the comptroller to adopt rules governing the conduct of protest hearings and provisions for exceptions to comptroller decisions on protests.

The repeals implement Government Code, §403.303(c) and (e).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ashley Harden
General Counsel
Comptroller of Public Accounts
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Proposal publication date: November 19, 2010
For further information, please call: (512) 475-0387

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### SUBCHAPTER L. PROCEDURES FOR PROTESTING COMPTROLLER PROPERTY VALUE STUDY AND AUDIT FINDINGS

**34 TAC §§9.4301 - 9.4317**

The Comptroller of Public Accounts adopts new §§9.4301 - 9.4317, concerning new Subchapter L, Procedures for Protesting Comptroller Property Value Study and Audit Findings, to replace §§9.4301 - 9.4313, with changes to the proposed text of §§9.4303, 9.4304, 9.4306, 9.4307, 9.4309, 9.4310, 9.4314, and 9.4315 as published in the November 19, 2010, issue of the *Texas Register* (35 TexReg 10183). The adoptions of §§9.4301 - 9.4317 and repeal of §§9.4301 - 9.4313 are, in part, the result of a rule review of Texas Administrative Code, Title 34, Part 1, Chapter 9, Subchapter L, conducted by the comptroller. The rule review was performed pursuant to Government Code,

§2001.039 and resulted in a determination that the reasons for initially adopting §§9.4301 - 9.4313 continue to exist. Sections 9.4301 - 9.4317 are being adopted, and §§9.4301 - 9.4313 repealed, to provide added clarification to and improve efficiency of the protest process.

The agency received written comments from various businesses and individuals. Their comments and the agency's responses are as follows.

The agency received a written submission from an individual writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. Citing Texas Government Code, §403.302(d), the commenter stated that it is "unclear whether the final decision issued by the deputy comptroller on a jurisdictional defect or insufficient grounds for objection is a final determination of a protest that can be appealed to district court," that, "[a]s a result the comptroller has the ultimate say on whether a petition contains jurisdictional defects or raises sufficient grounds for objection, and the petitioner has no adequate recourse when it disagrees with the comptroller's determination," and that "[t]his problem is exacerbated by the language in proposed rule 9.4309(a) that a petition 'may be rejected by the division director without further review.'" The commenter continued to express concern that the proposed rule gives the comptroller "the privilege to pass on the merits of its opponent's case before allowing the matter to proceed to any neutral hearing." The commenter stated that the "provision . . . needs to be changed to ensure that a neutral party makes the ultimate decision" and suggested "either requiring the deputy comptroller to follow the ALJ's proposed decision, or specifically allowing judicial review of the comptroller's determination that a petition contains a jurisdictional defect or raises insufficient grounds of objection." The agency disagrees with these comments. Government Code, §403.303 expressly vests the comptroller with authority for final decisions. Additionally, Government Code, §403.303 governs the right of appeal to protest a comptroller determination and the rules do not abridge any such right. No change was made in response to these comments.

The agency received a written submission from an individual writing on behalf of Baker Botts, L.L.P., stating that the language in §9.4301(6) should be removed and "replaced with language consistent with the governing statutes and with the applicable SOAH and Comptroller decisions." The commenter stated that §9.4301(6) is inconsistent with the language of Government Code, §403.302(a) that "'[t]he study shall determine the taxable value of all property and of each category of property in the district.'" The agency disagrees. The commenter's interpretation would contradict and render meaningless the statutory provision under Government Code, §403.303(a) limiting property owner protests to property owners whose property is "included in the study." The commenter stated that "[b]y providing that property is not included in the study by virtue of any calculations made pursuant to §403.302(d), the proposed language would also violate §403.302(a)'s requirement that the study determine the 'taxable value' of the district's property." The agency received a written submission containing similar comments from an individual writing on behalf of Texas Taxpayers and Research Association (TTARA), stating that the definition of an eligible property owner should be amended "to provide that appeal is available to any owner of property with a tax liability of over $100,000 if the PVS results in a value on such property that is different from local value as reported to the commissioner, in either the preliminary or the amended preliminary certification of study findings." The agency disagrees with these comments. Property is not included in the study by virtue of a statutory deduction from market value. The commenter writing on behalf of Baker Botts, L.L.P., referencing a recent proposal for decision issued by SOAH and an order of the comptroller, also stated that the proposed language "contradicts not only the plain language of the governing statutes, but also SOAH's and the Comptroller's interpretations of those statutes." The agency disagrees. The comptroller's order referenced by the commenter expressly states that SOAH's decision was "not adopted for purposes of the Comptroller's final Decision on this matter and is not to be relied upon for precedential value." Government Code, §403.303 expressly vests the comptroller with authority for final decisions. No change was made in response to these comments.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented that §9.4301(8) and §9.4305(e) effectively end appraisal district protests and noted that "it is sometimes important to the CAD to be able to vindicate itself, even though the ISD may not be interested in a protest." The agency also received a written submission by another individual expressing disagreement with §9.4305. That commenter "feel[s] very strongly that the appraisal districts should be given the opportunity to appeal the school district ratio study even if the school district designates their own agent other than an appraisal district," stating that "[t]he appraisal district knows its values and property probably better than anyone and may be able to show why a particular change should be done" and that appraisal district protests "would allow for a more accurate report." The agency disagrees with these comments. Except as may be provided by comptroller rule, there is no statutory right of protest granted to an appraisal district. An appeal brought by an appraisal district can adversely impact the taxable value findings of a school district. The rules provide protest rights to an appraisal district when authorized by a school district. Furthermore, the rules do not limit the ability of an appraisal district to provide input and assistance to a protesting school district for which it appraises property. No change was made in response to these comments.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented, with regard to §9.4302(d), that "[s]ome method of verification of the PTAD's receipt, similar to a file mark, would be appreciated" and asked what would constitute acceptable proof of delivery for a protest sent by email and whether "the automatic e-mail read acknowledgment" will suffice. Nothing in §9.4302(d) prohibits a request for verification of receipt. Regarding acceptable proof of delivery for protests submitted by email, an "automatic e-mail read acknowledgement" might be acceptable proof of delivery, but such a determination is fact dependent and subject to vary depending on the particular circumstances of each protest. No change was made in response to this comment.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented, with regard to §9.4302(e) that "'[t]he independent discretion to impose deadlines and schedule hearing dates'" is an extremely broad grant of power that could be very prejudicial to the protester." The agency disagrees with this comment. The discretion referenced is limited by the phrase "[e]xcept as otherwise provided in this subchapter." No change was made in response to this comment.

The agency received a written submission from another individual that stated, with regard to §9.4302(e), "the division director should not be granted 'independent discretion' to impose dead-

lines that are not otherwise specified in the rules." The agency disagrees. The property value study protest process is subject to limiting time constraints. Section 9.4302(e) assists the division director in furthering the goal of expeditious management of the protest process. No change was made in response to this comment.

The agency received a written submission from an individual that stated, with regard to §9.4303(b), that a school district should have additional time to protest "if amended findings increase the PTAD value estimate," stating that "[t]he PTAD value estimate is what matters, as they try to retain their eligible district status, even if the proposed certified value does not change." The agency, although not in complete agreement with the commenter's rationale and assuming that the commenter actually intended to reference §9.4303(c), does agree with the commenter's suggested change insofar as an amended preliminary finding might impact a school district under Government Code, §403.3011(2)(C). Section 9.4303(d) was added to provide additional time to protest if amended preliminary findings result in a change from a determination of local value of 90% or greater of the lower limit of the margin of error to a determination of local value of less than 90% of the lower limit of the margin of error.

The commenter writing on behalf of Baker Botts, L.L.P. commented, with regard to §9.4303(c), that "[n]o statutory provision authorizes the imposition of more restrictive requirements on the ability of a school district or property owner to protest amended preliminary findings than are imposed on the ability to protest preliminary findings," asserting that a property owner should be permitted to protest the comptroller's calculation of statutory deductions, and suggested that the rule provide that "[i]f the comptroller certifies amended preliminary findings for a school district, the affected school district and eligible property owners to whose property the amended preliminary findings pertain have a right to protest the findings in the manner required by this subchapter." The agency, although not in complete agreement with the commenter's rationale, does agree with the commenter's suggested change insofar as an amended preliminary finding increases the appraised or assigned value of the property of an eligible property owner as defined in §9.4301(6). Section 9.4303(e) was added to provide additional time to protest if amended preliminary findings increase the appraised or assigned value of property included in the study and owned by an eligible property owner as defined in §9.4301(6).

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also inquired, with regard to §9.4304(a), as to the meaning of "technical errors or omissions." Pursuant to §9.4302(b), except as otherwise provided, the language is subject to construction as provided by the Code Construction Act, Government Code, Chapter 311. In application, this is a fact-dependent determination that, pursuant to §9.4304(a), is subject to the discretion of the division director and does not include failure to submit grounds for objection or supporting evidence as required. The commenter did not request any specific change and no change was made in response.

The agency received a written submission from an individual that stated, with regard to §9.4304(b), that "an extension of the filing deadline should be permitted, if good cause is shown," stating "[t]here is enough leeway in the overall timeline of the appeals process for a filing extension if the circumstances so warrant." The agency disagrees. The property value study protest process is subject to significant time constraints. Furthermore, pursuant to Government Code, §403.303(a), the 40-day time period within which to file a protest is statutory. No change was made in response to this comment.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented, with regard to §9.4304(f), that "[t]he rule against extensions of time to file a protest seems to conflict with subsections (a) - (e)." The agency disagrees with this comment. Section 9.4304(a) is expressly limited to timely filed protest petitions. Section 9.4304(b) expressly excludes the deadline to file a protest. Section 9.4304(c) - (e) simply refer to extensions permitted under the rule. However, the wording in §9.4304(c) - (e) has been revised to clarify that those subsections only apply as provided under §9.4304(a) and (b).

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented, with regard to §9.4305(e), that it "is unclear what constitutes authorization of a school district for a CAD to protest." Section 9.4305(e) specifically provides that "[a]n appraisal district may not protest unless authorized to do so in writing by a school district." Furthermore, §9.4306(b)(2) requires that a petition be signed by "the superintendent of the school district and the chief appraiser of the appraisal district, if it is a petition filed by an appraisal district authorized by a school district." The commenter did not request any specific change and no change was made in response.

The commenter writing on behalf of Baker Botts, L.L.P. commented, with regard to §9.4305(h), that "[t]his Proposed Rule ignores the possibility of the Comptroller requiring an appraisal district to incorrectly calculate a statutorily required deduction from the local value for an unstudied district," stating "there would be no way for the school district or any other entity to challenge the incorrect instructions." The commenter urged the comptroller not to adopt §9.4305(h). The agency disagrees. Government Code, §403.303 provides rights of protest only as to comptroller "findings." Section 9.4305(h) provides a rational and logical limitation that takes into account the statutory framework as revised in the last legislative session to conduct a study at least every two years rather than annually. No change was made in response to these comments.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented, with regard to §9.4306(c), that "[i]t seems unnecessarily cumbersome to mandate that a 'petition is not filed until it is actually received by the division director'" and asked if they "will need to hand the petition to the director specifically." The commenter also stated that "clarification of and specificity of the conditions constituting acknowledgment of receipt would be appreciated." Section 9.4306(c) expressly references §9.4302(d) which, in turn, provides specific addresses for each permissible method of filing. Determinations regarding proof of receipt regarding any specific protest are fact dependent and subject to vary depending on the particular circumstances of the protest. No change was made in response to this comment.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented, with regard to §9.4306(e), that "[t]he USPS has become parsimonious about postmarks" and asked if "in-house postage meter or franking dates [will] be acceptable." The agency disagrees that the United States Postal Service has become parsimonious about postmarks. However, the subsection has been revised to permit

postmark by compliant use of a postage meter licensed by the United States Postal Service.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented, with regard to §9.4307(d), that "[g]iving only five calendar days to file exceptions is extremely short" and suggested that the rule should make the filing of exceptions mandatory. The commenter writing on behalf of Baker Botts, L.L.P. also commented, with regard to §9.4307(d), §9.4309(f), and §9.4315(c), that the five-day period to file exceptions "is an uncommonly brief period of time." The commenter suggested a ten calendar day period. The agency received a written submission containing similar comments from an individual writing on behalf of Texas Taxpayers and Research Association (TTARA), stating that the proposed rules should be amended "as necessary to allow more time to file exceptions to a proposal for decision" and that "valuable flexibility would be provided if an adversely affected party could, for good cause shown, be allowed to obtain a one-time extension of five additional days." The agency disagrees with these comments. The five-day period applies equally to all parties and furthers the goal of expeditious management of the protest process. Government Code, §403.303(d) provides for the "opportunity," not a mandate, to file exceptions if the comptroller has not heard the case or read the record. Despite the agency's disagreement, the five-day periods in §9.4307(d), §9.4309(f), and §9.4315(c) have been revised to seven-day periods.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also inquired, with regard to §9.4307(e), if "this is intended to foreclose judicial review of dismissals" and "[w]hy even refer a matter to SOAH if the deputy comptroller will make an independent decision on the matter." Government Code, §403.303 expressly vests the comptroller with authority for final decisions. Additionally, Government Code, §403.303 governs the right of appeal to protest a comptroller determination and §9.4307(e) does not abridge any such right. The commenter did not request any specific change and no change was made in response.

The commenter writing on behalf of Baker Botts, L.L.P. commented that §9.4307(h) "would impermissibly shift the burden of proof on jurisdictional matters for property value study protests," citing an Texas appellate court opinion for the proposition that "[w]hen evaluating a challenge to standing, the factual allegations by the party seeking standing are accepted as true, unless the other party pleads and proves that the allegations were made fraudulently to confer jurisdiction." The commenter urged the comptroller not to adopt §9.4307(h). The commenter stated that "Government Code, §403.303(a) specifically states who may protest the property value study, and the Comptroller may not by regulation restrict the statutory right to protest held by school districts and certain property owners." The agency received a written submission containing similar comments from an individual writing on behalf of Texas Taxpayers and Research Association (TTARA), requesting deletion of §9.4307(h) and stating that "elimination of this proposed rule would be consistent with the practice in judicial proceedings and with assignment to the Comptroller of the burden of proof on value disputes." The agency disagrees with these comments. Protest rights are statutory. Section 9.4307(h) does not in any manner abridge a proper party's right to protest. Additionally, the case law cited by the commenter writing on behalf of Baker Botts, L.L.P. is not controlling. No change was made in response to these comments.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented, with regard to §9.4308(b)(3), that "[i]t is not always possible to quantify the 'value of the change sought'" and that "[o]ften, the value change is fluid and is based on sliding modifiers." If a petitioner alleges that a finding is inaccurate and claims that a value adjustment is necessary to correct the inaccuracy, the petitioner should be able to identify what value adjustment would correct the inaccuracy. The commenter did not request any specific change and no change was made in response.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented that §9.4308(b)(5) gives "PTAD the privilege to pass on the merits of its opponent's case before allowing the matter to proceed to a neutral hearing." The commenter stated that "[t]he parties will certainly disagree whether the evidence supports the petitioner's contention" and stated that "[t]he provision needs to be deleted in its entirety." The agency also received a written submission containing similar comments from another individual. The agency disagrees. If a petition or ground for objection is rejected for failure to comply with §9.4308, Subchapter L (relating to Procedures for Protesting Comptroller Property Value Study and Audit Findings) affords petitioners opportunity to seek review by the State Office of Administrative Hearings and a final determination by the deputy comptroller. No change was made in response to these comments.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented that §9.4308(c) "requires too great a level of specificity" and that "it should be permissible to protest the application of a modifier or time adjustment to all properties," noting "[t]hat is often the sole issue." The agency also received a written submission containing similar comments from another individual who stated that "[i]f there is a methodological issue that cuts across an entire range of properties or category of property, that flaw should be part of the appeal." The agency disagrees. As noted in §9.4308(c), "[m]atters such as calculation of local modifiers, land schedules, and stratification do not constitute comptroller findings, but may be used in arriving at comptroller findings." Government Code, §403.303 provides rights of protest as to comptroller findings. Nothing in §9.4308(c) prevents petitioners from challenging application of a local modifier or time adjustment in support of a protest of a specific comptroller finding. No change was made in response to these comments.

The agency also received a written submission by an individual regarding §9.4308(b) - (d), stating that the rules are unduly burdensome and too onerous. The agency disagrees. The rules provide clear direction to protesting parties and require very fundamental information regarding claims of inaccurate findings. No change was made in response to this comment.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented that §9.4309(a) should be purged, stating that it denies further review "due to alleged non-compliance with 9.4308." The commenter states that "PTAD is taking . . . the attitude [that] a protest must meet its standards before even being allowed to have a hearing." The agency disagrees. If a petition or ground for objection is rejected for failure to comply with §9.4308, Subchapter L, affords petitioners opportunity to seek review by the State Office of Administrative Hearings and a final determination by the deputy comptroller. No change was made in response to this comment.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented, with regard to §9.4309(c), that "[g]iving no opportunity for an oral hearing on a rejection is also a ripe area for conflict and abuse." The agency disagrees. If a petition or ground for objection is rejected for failure to comply with §9.4308, Subchapter L, affords petitioners opportunity to seek review by the State Office of Administrative Hearings and a final determination by the deputy comptroller. A petition must reflect compliance with §9.4308; a petition requiring testimony or argument to establish compliance would not comply with §9.4308. No change was made in response to this comment.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also inquired, with regard to §9.4309(g), "[a]gain, if the comptroller is not bound by the SOAH decision, what is the point? Does this section attempt to preclude judicial review?" Government Code, §403.303 expressly vests the comptroller with authority for final decisions. Additionally, Government Code, §403.303 governs the right of appeal to protest a comptroller determination and §9.4309(g) does not abridge any such right. The commenter did not request any specific change and no change was made in response.

The agency also received a written submission by another individual regarding §9.4309, stating that "[i]t is incongruous to allow the PTAD to reject an appeal merely because one of the myriad detailed, technical filing requirements has not been satisfied." The commenter stated that "[p]roviding for review by SOAH is helpful as compared to the current rule, but the nature of the review is so limited that the effectiveness of the review is questionable." The agency disagrees. The rules provide clear direction to protesting parties and require very fundamental information regarding claims of inaccurate findings. Additionally, if a petition or ground for objection is rejected for failure to comply with §9.4308, Subchapter L affords petitioners opportunity to seek review by the State Office of Administrative Hearings and a final determination by the deputy comptroller. A petition must reflect compliance with §9.4308; a petition requiring testimony or argument to establish compliance would not comply with §9.4308. No change was made in response to this comment.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented, with regard to §9.4309(h), that "[t]he petitioner should not have to ask for a reference to SOAH after a rejection." The agency disagrees. Some petitioners may not wish to request referral to SOAH. Thus, review by SOAH is optional, not mandatory. No change was made in response to this comment.

The agency also received a written submission by another individual regarding §9.4309(h), stating that its provisions "are unclear regarding the procedures applicable to rejected grounds when other grounds from the same appeal are referred to SOAH" and that the "process requires clarification." The agency disagrees. Section 9.4309(h) provides that "[a]fter the parties have completed the prehearing stages of review, recommendation, submission of evidence, and informal conference on the grounds for objection that have not been rejected and the petitioner has the opportunity to request referral to SOAH, petitioner may, at the same time and in the same manner as grounds for objection that have not been rejected, request referral to SOAH of rejected grounds for objection. The request for referral to SOAH of rejected grounds for objection must be included in petitioner's request for referral to SOAH of grounds for objection that were not rejected." Section 9.4311(f) - (g) addresses the requirements for requesting referral to SOAH. No change was made in response to this comment.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented, with regard to §9.4310(b), that "[t]here should be some discovery mechanism short of a PIA request," stating that "[a] PIA request may well take too long to be efficacious." The agency disagrees. The property value study protest process is subject to limiting time constraints and Subchapter L does provide for exchange of evidence that is structured to further the goal of expeditious management of the protest process. No change was made in response to this comment.

The agency received a written submission from an individual who commented, with regard to §9.4310(c), that "the requirement that the petitioner provide the PTAD with a copy of its response to petitioner's request for documents is unnecessary and burdensome." The commenter stated that "[t]he PTAD responses are often voluminous, and the PTAD will have a record of what it produced. The PTAD should be able to compare its prehearing filing with its prior response to the petitioner's information request." The agency agrees. The provision in §9.4310(c) that is the subject of the comment has been revised accordingly.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented, with regard to §9.4311(a), that "[a]llowing no response to a rejection is another way of muffling just presentation of a protest. The grounds for the rejection may be erroneous, but the protestor has no way of rebutting them." The agency disagrees. If a petition or ground for objection is rejected for failure to comply with §9.4308, Subchapter L affords petitioners opportunity to seek review by the State Office of Administrative Hearings and a final determination by the deputy comptroller. A petition must reflect compliance with §9.4308; a petition requiring testimony, argument, or response to establish compliance would not comply with §9.4308. No change was made in response to this comment.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented, with regard to §9.4311(b), that "[i]t is unreasonable to require such specificity from witnesses" and stated that "[i]t would be reasonable to require the protester to identify the general type of knowledge the witness has and provide a resumé if available." The agency disagrees. Section 9.4311(b) requires only identification of witnesses, the grounds for objection on which they may testify, and a current resumé, curriculum vitae, or summary of qualifications and identification of relevant certifications and licenses. Additionally, pursuant to §9.4311(b), no witness identification is required for the chief appraiser or other employees of the appraisal district that appraises property for the protesting school district. No change was made in response to this comment.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also inquired, with regard to §9.4311(c), whether affidavits are still allowed. Section 9.4311 does not prohibit the use of affidavits as evidence. No change was made in response to this comment.

The agency received a written submission from an individual commenting that §9.4311(c) "appears to authorize the PTAD to deliver, for the first time, a copy of the documents underlying its study at this late stage of the process" and "[t]hat should not be permitted, and this provision should be reconciled with §9.4310(b)." The agency disagrees. Documents may be obtained pursuant to the Public Information Act and related statu-

tory provisions. Nothing in Subchapter L abridges those rights. Section 9.4310(b) provides a protest-specific remedy under certain circumstances in which documents are not made available in response to a proper request in accordance with the Texas Public Information Act. No change was made in response to this comment.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented, with regard to §9.4311(d), that "[t]here needs to be some flexibility regarding attending the informal hearing rather than an automatic dismissal for missing it." Although the agency does not agree with the entire comment, §9.4304 provides for extensions of deadlines for good cause shown. To provide clarification of its potential applicability, §9.4304(b) has been revised accordingly.

The commenter writing on behalf of Baker Botts, L.L.P. recommended that the comptroller not adopt the language in §9.4311(d) requiring petitioners to participate in an informal conference. The commenter stated that the "proposed additional jurisdictional requirement to participate in an informal conference with the Comptroller before a protest is referred to the State Office of Administrative Hearings is inconsistent with the statutory requirement that a hearing be held to consider the protest" and that a hearing "may not be avoided by requiring petitioners to prove their case multiple times or lose the right to a hearing." The agency disagrees. The informal conference provides an opportunity for the parties to confer on protest issues. There is no requirement that a petitioner prove its case at the informal conference and §9.4311(d) does not, absent a failure to participate by a petitioner, abridge any right to a hearing.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented, with regard to §9.4311(e), that "[m]aking the section inapplicable to grounds that have been unilaterally rejected again makes the rejection provisions particularly harsh." The agency disagrees. If a petition or ground for objection is rejected for failure to comply with §9.4308, Subchapter L affords petitioners opportunity to seek review by the State Office of Administrative Hearings and a final determination by the deputy comptroller. A petition must reflect compliance with §9.4308; a petition requiring testimony, argument, or response to establish compliance would not comply with §9.4308. No change was made in response to this comment.

The agency received a written submission from an individual commenting, with regard to §9.4311(g), that "[t]he request for referral should be based on any objections/issues raised by petitioner that have not been agreed to during the prior phases of the process," stating that "[r]equiring the petitioner to list them creates another unnecessary stumbling block for petitioners" and that "the clock should not start running until petitioner receives a definitive PTAD response on all issues raised in the appeal." The agency disagrees. Some petitioners may not wish to request referral to SOAH on all issues for which referral to SOAH may be requested. Review by SOAH is optional, not mandatory. Additionally, nothing in Subchapter L prohibits continued negotiation between parties. No change was made in response to this comment.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented, with regard to §9.4312(a), that "[g]iving only PTAD the right to refer to SOAH is very unilateral." The agency disagrees. SOAH's authority to conduct administrative hearings under Subchapter L is limited by Government Code, §2003.021(b)(4) to matters referred by a governmental entity for a fee and under a contract. Furthermore, Subchapter L affords petitioners opportunity to seek review by the State Office of Administrative Hearings. No change was made in response to this comment.

The commenter writing on behalf of Baker Botts, L.L.P. recommended that §9.4312(a) should state that "[t]he division shall refer all unresolved matters to the State Office of Administrative Hearings." The commenter stated that the proposed "language could be interpreted to allow the Comptroller discretion as to whether or not to refer a protest to SOAH for a hearing." The agency received a written submission containing similar comments from an individual writing on behalf of Texas Taxpayers and Research Association (TTARA), stating that §9.4312(a) should be amended "to clarify that a referral of a dispute to SOAH must be made by the Comptroller if requested by the petitioner." The agency disagrees with these comments. Subchapter L provides language for referral to SOAH that is not in any manner abridged by the language in §9.4312(a). Additionally, some petitioners may not wish to request referral to SOAH. Review by SOAH is optional, not mandatory, but the change requested by the commenter writing on behalf of Baker Botts, L.L.P. would suggest otherwise. No change was made in response to these comments.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented, with regard to §9.4312(c), that "PTAD should not be able to unilaterally join different protests." The agency disagrees. The property value study protest process is subject to limiting time constraints and joining protests for purposes of hearing furthers the goal of expeditious management of the protest process. No change was made in response to this comment.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also inquired, with regard to §9.4313(b), why the petitioner must "provide a copy of the transcription at its own expense." A petitioner need not incur any such expense if no court reporter is retained for purposes of a hearing. A court reporter need not be retained; all oral hearings under Subchapter L are recorded. No change was made in response to this comment.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented, with regard to §9.4313(g), that "[t]he restrictions on testimony seem to go beyond what the rule of evidence or procedure would restrict" and stated that "[i]t will be impossible for a witness to put into documentary form all of his anticipated testimony" and "rebuttal testimony might not be anticipated." The agency received a written submission from another individual stating that "[a]s long as the testimony relates to an issue properly the subject of the hearing, including applicable standards, it should be allowed." The agency disagrees. Section 9.4313(g) does not require a witness to put all testimony in documentary form; only the facts must be reflected in the documentary evidence. Pursuant to §9.4313(g), the testimony of a witness may provide, subject to proper objections, background regarding, governing law or standards relating to, or explanation of the documentary evidence. Furthermore, under Subchapter L, all parties are required to produce all facts in advance of any oral hearing. No change was made in response to these comments.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented that §9.4313(h) is "grossly overly restrictive." The commenter stated that "[p]rop-

erty owners may be witnesses," "[t]he Ag Advisory Board may have useful testimony," and "[f]ee appraisers are not even per se allowed by this section." The agency disagrees. Section 9.4313(h) does not exclude the testimony of such persons; it merely provides that they are subject to challenge and exclusion in accordance with the Texas Rules of Evidence and applicable case law. No change was made in response to this comment.

The commenter writing on behalf of Baker Botts, L.L.P. recommended that §9.4314(c)(3)(B) be revised to provide for a single hearing providing for participation by the "affected school district(s), the commissioner of education, and any eligible property owner that has filed a valid and timely petition," stating that "it is unclear why §9.4314(c)(3)(A) provides for participation by any eligible property owner that has filed a valid and timely petition," but §9.4314(c)(3)(B) does not. The agency agrees. Section 9.4314(c)(3)(B) has been revised accordingly.

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented, with regard to §9.4314(d), that "[i]t should be clear that though the ALJ takes notice of the comptroller's procedures that does not make them presumably correct." The agency disagrees. Section 9.4314(d) does not state or imply that the comptroller's procedures are presumably correct. No change was made in response to this comment.

The agency received a written submission from an individual commenting that §9.4314(d) is "too broad" and that "[i]t is not appropriate to take official notice of internal policies and procedures, particularly if they are not written and open to the public." The agency, although not in complete agreement with the commenter's rationale, does agree that a limitation to written policies and procedures would be more appropriate. Section 9.4314(d) has been revised accordingly and, for additional clarification, the word "ratio" has been replaced with "property value."

The commenter writing on behalf of members of McCreary, Veselka, Bragg & Allen, P.C. also commented, with regard to §9.4316(a), "[d]itto the above comments about the authority of the deputy comptroller to reject or modify the ALJ decision." The agency disagrees. Government Code, §403.303 expressly vests the comptroller with authority for final decisions. Additionally, Government Code, §403.303 governs the right of appeal to protest a comptroller determination and §9.4316(a) does not abridge any such right. The commenter did not request any specific change and no change was made in response.

Furthermore, the agency corrects the reference to "proposed final decision" in §9.4307(a) to "proposal for decision" to maintain consistency with the language used in Subchapter L and adds a comma that was inadvertently omitted in §9.4309(b).

The new sections are adopted under Government Code, §403.303(c) and (e) which provide for the comptroller to adopt rules governing the conduct of protest hearings and provisions for exceptions to comptroller decisions on protests.

The new sections implement Government Code, §403.303(c) and (e).

*§9.4303. Changes in Preliminary Certification of Study Findings.*

(a) At any time before the date on which final changes in the preliminary findings under Government Code, §403.302(g) are certified to the commissioner of education, the comptroller may certify to the commissioner of education amended preliminary findings.

(b) An amended preliminary finding is a change made by the comptroller to a school district's preliminary findings that is certified to the commissioner of education after the date on which preliminary findings for the school district were originally certified and before the date on which final certification of changes in preliminary findings are certified.

(c) If the comptroller certifies amended preliminary findings for a school district for which the comptroller's determination initially certified to the commissioner of education reflected valid local value pursuant to Government Code, §403.302(c) and the amended preliminary findings result in a determination that the school district's local value is invalid pursuant to Government Code, §403.302(c), the affected school district and eligible property owners to whose property the amended preliminary findings pertain have a right to protest the findings in the manner required by this subchapter. A petition protesting the comptroller's amended preliminary findings pursuant to this section must be filed within 40 calendar days after the date the comptroller certifies the amended preliminary findings to the commissioner of education. In addition to the restrictions stated in this subsection, all provisions in this subchapter relating to standing apply to protests of amended preliminary findings.

(d) If the comptroller certifies amended preliminary findings for a school district that result in a change from a determination of local value of 90% or greater of the lower limit of the margin of error to a determination of local value of less than 90% of the lower limit of the margin of error, the affected school district and eligible property owners to whose property the amended preliminary findings pertain have a right to protest the findings in the manner required by this subchapter. A petition protesting the comptroller's amended preliminary findings pursuant to this section must be filed within 40 calendar days after the date the comptroller certifies the amended preliminary findings to the commissioner of education. In addition to the restrictions stated in this subsection, all provisions in this subchapter relating to standing apply to protests of amended preliminary findings.

(e) If the comptroller certifies amended preliminary findings for a school district that increase the appraised or assigned value of property included in the study and owned by an eligible property owner as defined in §9.4301(6) of this title (relating to Definitions), the affected school district and eligible property owner to whose property the amended preliminary findings pertain have a right to protest the findings in the manner required by this subchapter. A petition protesting the comptroller's amended preliminary findings pursuant to this section must be filed within 40 calendar days after the date the comptroller certifies the amended preliminary findings to the commissioner of education. In addition to the restrictions stated in this subsection, all provisions in this subchapter relating to standing apply to protests of amended preliminary findings.

*§9.4304. Extensions of Time.*

(a) Before a referral to the State Office of Administrative Hearings (SOAH), the division director, at the director's independent initiative and discretion, may grant a petitioner an extension of time for the limited purpose of correcting technical errors or omissions in a timely filed protest petition. Petitioner's failure to submit grounds for objection or supporting evidence as required by this subchapter is not a technical error or omission.

(b) At any time before a referral to SOAH, a petitioner may request an extension of time for any deadline, except the deadline to file a protest, by submitting a request for extension to the division director. For purposes of this section, the scheduled date for an informal conference is considered a deadline.

(c) An extension of time under subsection (a) or (b) of this section shall be requested in writing and be submitted to and received by the division director at least five business days in advance of the

original deadline for which the extension is requested. If requested in writing by the petitioner and for good cause shown, the division director may waive the requirement that the request for the extension be made five calendar days in advance of the deadline.

(d) An extension under subsection (a) or (b) of this section may not extend the deadline for more than ten calendar days.

(e) An extension under subsection (a) or (b) of this section may be granted by the division director only for good cause shown, and if the reason for the extension is not the petitioner's neglect, indifference, or lack of diligence. Good cause does not include a claim that the time periods established in this subchapter are too short to meet the deadline.

(f) No extension may be granted to extend the deadline to file a protest.

*§9.4306. Filing a Protest.*

(a) A protest shall be asserted by timely filing a petition with the division. A petition protesting the comptroller's preliminary findings under Government Code, §403.302(g) must be filed within 40 calendar days after the date the comptroller certifies preliminary findings of taxable value to the commissioner of education pursuant to Government Code, §403.302(g). A petition seeking a self-report correction pursuant to §9.4305(g) of this title (relating to Who May Protest) must be filed within 40 calendar days after the date the comptroller certifies preliminary findings of taxable value to the commissioner of education pursuant to Government Code, §403.302(g). A petition protesting the comptroller's findings under Government Code, §403.302(h) must be filed within 40 calendar days after the date the comptroller certifies findings of the audit to the commissioner of education pursuant to Government Code, §403.302(h).

(b) A petition must be signed by:

(1) the superintendent of the school district and the school district's designated agent, if it is a petition filed by a school district;

(2) the superintendent of the school district and the chief appraiser of the appraisal district, if it is a petition filed by an appraisal district authorized by a school district; or

(3) the property owner and the property owner's agent, if it is a petition filed by a property owner.

(c) All petitions shall be filed with the division director in the form and manner prescribed by the comptroller. A petition may be delivered to the division director by hand delivery, mail, overnight delivery service, or email in accordance with the provisions of §9.4302(d) of this title (relating to General Provisions), but a petition is not filed until it is actually received by the division director. For purposes of this subsection, receipt by the division constitutes receipt by the division director. The petitioner is responsible for verifying receipt by the division of all documents delivered regardless of the method of delivery. A petitioner shall have the burden to prove that a petition was timely filed.

(d) A petition delivered to the division director by hand delivery or email is timely filed only if it is received on or before the last day for filing as set forth in subsection (a) of this section and meets the requirements set forth in §9.4302(d) of this title.

(e) A petition delivered to the division director by mail is timely filed only if it is received on or before the last day for filing as set forth in subsection (a) of this section or if it is received within ten calendar days of the day it is sent and it is sent by United States Postal Service first-class mail in a properly addressed and sufficiently stamped envelope or box and the envelope or box exhibits a legible postmark affixed by the United States Postal Service or by compliant use of a postage meter licensed by the United States Postal Service showing that the petition was mailed on or before the last day for filing as set forth in subsection (a) of this section.

(f) A petition delivered to the division director by overnight delivery service is timely filed only if it is received on or before the last day for filing as set forth in subsection (a) of this section or if it is received within ten calendar days of the day it is sent and it is sent by overnight delivery service in a properly addressed and prepaid envelope or box and the envelope or box exhibits a legible date showing that the petition was delivered to the overnight delivery service for delivery on or before the last day for filing.

(g) A school district shall deliver a copy of its petition, except supporting documentary evidence, to each appraisal district that appraises property for the district. An appraisal district authorized by a school district to file a protest shall deliver a copy of its petition, except supporting documentary evidence, to the school district that authorized the protest. A property owner shall deliver a copy of its petition, including supporting documentary evidence, to each school district and appraisal district in which the property under protest is located. Every petition shall contain a certification that a copy of the petition was delivered as required by this subsection.

(h) The petition, including supporting documentary evidence, if filed by mail or overnight delivery service, must be filed in triplicate with the division director and the original and both copies must be in the form required under this subchapter. If filed by email, only the original must be filed; no additional copies are required.

*§9.4307. Dismissal.*

(a) A petition is subject to dismissal if there is any jurisdictional defect. Jurisdictional defects include, but are not limited to, lack of standing and untimely filing. If a petition is filed and there is a jurisdictional defect, the division may file a motion to dismiss with the State Office of Administrative Hearings (SOAH) and a request to docket. Following receipt of the referral, SOAH shall assign the case a docket number and assign an Administrative Law Judge (ALJ). At the time of filing the motion to dismiss, the division will deliver a copy to petitioner by United States Postal Service First Class Mail and, if an email address has been provided in the petition, by email. The petitioner may, no later than seven calendar days from the date the motion to dismiss is filed, file a response with SOAH. At the time of filing a response, the petitioner shall deliver a copy of the response to the division director and counsel for the division by United States Postal Service First Class Mail and email. The division will have seven calendar days from the date of filing of the response to file a reply with SOAH. At the time of filing a reply, a copy shall be delivered to petitioner by United States Postal Service First Class Mail and, if an email address has been provided in the petition, by email. After time for the division to file a reply has expired, SOAH shall consider the motion, any timely-filed response, and any timely-filed reply, and issue a proposal for decision within seven business days to the deputy comptroller stating the ALJ's recommendation as to the decision on the motion. Neither the division nor the petitioner shall be permitted to submit any additional information or evidence for consideration by the ALJ. No oral hearing will be held.

(b) The ALJ's proposal for decision shall include the ALJ's recommendation for final decision and the rationale supporting such recommendation.

(c) The ALJ shall serve the proposal for decision on the deputy comptroller, the petitioner, and the division director by facsimile, electronic mail, hand delivery, or overnight mail delivery service. An ALJ will forward a copy of the record to the deputy comptroller with any proposal for decision.

(d) A party to the protest that is adversely affected by the proposal for decision may, within seven calendar days after the date the proposed decision is sent by facsimile, electronic mail, hand delivery or is delivered to an overnight delivery service, file with the deputy comptroller exceptions to the proposal for decision. Exceptions filed pursuant to this subsection shall be filed with the comptroller's Special Counsel for Tax Hearings by facsimile or hand delivery and shall on the same date be served on all other parties to the protest by facsimile, hand delivery, or email. If exceptions are filed, all other parties may, within seven calendar days after the date the exceptions are filed, file replies to the exceptions. Replies filed pursuant to this subsection shall be filed with the comptroller's Special Counsel for Tax Hearings by facsimile or hand delivery and shall on the same date be served on all other parties to the protest by facsimile, hand delivery or email.

(e) The deputy comptroller shall issue a final order and, in doing so, may adopt, amend, or reject the ALJ's proposal for decision.

(f) A decision is final on the date signed by the deputy comptroller.

(g) The deputy comptroller shall deliver written notice of the final decision to each party to the protest.

(h) Petitioner bears the burden of proof on all jurisdictional matters.

(i) If a motion to dismiss is denied, the petition will be processed in accordance with this subchapter.

*§9.4309. Insufficient Grounds for Objection.*

(a) Any petition or ground for objection that does not comply with §9.4308 of this title (relating to Contents of Petition) does not adequately specify the grounds for objection as required by Government Code, §403.303(a) and may be rejected by the division director without further review by the division.

(b) If the division director determines that a petition or ground for objection asserted in a petition does not comply with §9.4308 of this title, the division will notify the petitioner that the petition or ground for objection has been rejected pursuant to this section. No additional information or evidence may be submitted by a petitioner after a determination of rejection has been made by the division director. Grounds for objection, if any, that have not been rejected will be processed as otherwise set forth in this subchapter.

(c) If a petition is rejected in its entirety as set forth in this section, the petitioner may request referral of the rejection to State Office of Administrative Hearings (SOAH) within seven calendar days of the date that the division sends petitioner notice of the rejection. Upon timely written request to the division, a copy of the petition will be referred to SOAH with notice that the petition has been rejected pursuant to this subchapter and a request to docket. Following receipt of the referral, SOAH shall assign the case a docket number and assign an Administrative Law Judge (ALJ). The petitioner shall not be permitted to submit any additional information or evidence for consideration by the ALJ. No oral hearing will be held. The ALJ shall consider the petition and make a determination as to each ground for objection included in the petition as to whether or not such ground for objection complies with §9.4308 of this title. If the ALJ determines that a ground for objection does not comply with §9.4308 of this title, the ALJ shall, within ten business days after referral, issue a proposal for decision to the deputy comptroller that the ground for objection be rejected. If the ALJ determines that a ground for objection does comply with §9.4308 of this title, the ALJ shall, within ten business days after referral, issue a proposal for decision to the deputy comptroller stating the ALJ's recommendation as to the decision on such ground for objection. The decision must specify the specific change to the study findings the ALJ recommends and the change must be based solely on the ground for objection set forth in the petition. A ground for objection that does not comply with §9.4308 of this title will not provide the ALJ with sufficient information to identify a specific change to the study findings. An ALJ will forward a copy of the record to the deputy comptroller with any proposal for decision. After receiving the ALJ's proposal for decision and the record, the deputy comptroller shall issue a final decision.

(d) An ALJ's proposal for decision issued pursuant to subsection (c) of this section shall include the ALJ's recommendations for final decision and the rationale supporting such recommendations.

(e) The ALJ shall serve a proposal for decision issued pursuant to subsection (c) of this section on the deputy comptroller, the petitioner, and the division director by facsimile, electronic mail, hand delivery, or overnight mail delivery service. An ALJ will forward a copy of the record to the deputy comptroller with any proposal for decision.

(f) A party to the protest that is adversely affected by a proposal for decision issued pursuant to subsection (c) of this section may, within seven calendar days after the date the proposed decision is sent by facsimile, electronic mail, hand delivery or is delivered to an overnight delivery service, file with the deputy comptroller exceptions to the proposal for decision. Exceptions filed pursuant to this subsection shall be filed with the comptroller's Special Counsel for Tax Hearings by facsimile or hand delivery and shall on the same date be served on all other parties to the protest by facsimile, hand delivery, or email. If exceptions are filed, all other parties may, within seven calendar days after the date the exceptions are filed, file replies to the exceptions. Replies filed pursuant to this subsection shall be filed with the comptroller's Special Counsel for Tax Hearings by facsimile or hand delivery and shall on the same date be served on all other parties to the protest by facsimile, hand delivery or email.

(g) The deputy comptroller shall issue a final order on a proposal for decision issued pursuant to subsection (c) of this section and, in doing so, may adopt, amend, or reject the ALJ's proposal for decision. A decision is final on the date signed by the deputy comptroller. The deputy comptroller shall deliver written notice of the final decision to each party to the protest.

(h) If one or more, but not all, of the grounds for objection included in a petition are rejected as set forth in this section, the grounds for objection that have not been rejected will be processed as set forth in this subchapter. After the parties have completed the prehearing stages of review, recommendation, submission of evidence, and informal conference on the grounds for objection that have not been rejected and the petitioner has the opportunity to request referral to SOAH, petitioner may, at the same time and in the same manner as grounds for objection that have not been rejected, request referral to SOAH of rejected grounds for objection. The request for referral to SOAH of rejected grounds for objection must be included in petitioner's request for referral to SOAH of grounds for objection that were not rejected. As to grounds for objection that have been rejected, the provisions of subsections (c) - (g) of this section will control. As to grounds for objection that have not been rejected, the remaining provisions of this subchapter will control.

*§9.4310. Study and Audit Documents.*

(a) The documents created, obtained, and utilized by the division in conducting the study or performing the audit, as applicable, are considered the initial evidence in a protest of the comptroller's findings under Government Code, §403.302(g) or (h). Except as provided in subsection (b) of this section, all such documents are deemed admissible evidence for purposes of any hearing referred to the State Office of Administrative Hearings (SOAH) under this subchapter.

(b) Any documents created, obtained, and utilized by the division in conducting the study or performing the audit, as applicable, that are not made available in response to a proper request in accordance with the Texas Public Information Act are deemed, as to the division, inadmissible for purposes of any hearing referred to SOAH under this subchapter. This subsection does not restrict a petitioner's right to file such documents in support of a ground of objection as provided under this subchapter. If a petitioner does elect to file such documents, the documents will be deemed admissible evidence on each ground of protest in support of which the documents are filed for purposes of any hearing referred to SOAH under this subchapter.

(c) Any claim by a petitioner that documents created, obtained, or utilized by the division in conducting the study or performing the audit, as applicable, were not made available in response to a proper request in accordance with the Texas Public Information Act shall be made by written notice to the division director within seven calendar days of delivery by the division of such documents pursuant to §9.4311(c) of this title (relating to Prehearing Exchange and Informal Conference). Petitioner's notice must include a copy of petitioner's request for documents, any response received from the division (although such response(s) need not include copies of the documents produced therewith), and identification of the specific documents petitioner claims were not made available. If petitioner fails to timely provide such written notice to the division director, the claim shall be deemed waived for purposes of the protest.

(d) After receipt of timely written notice under subsection (c) of this section and consideration of petitioner's claim, the division director shall deliver to petitioner written notice as to whether or not the documents at issue will be withdrawn as evidence. If the documents at issue are not withdrawn as evidence, the matter will be determined at the SOAH hearing, if any, on the ground of protest at issue. The division director's notice will include all documentary evidence that the division will introduce and identification of all witnesses who may testify at the time of the SOAH hearing, if any, relating to petitioner's claim under subsection (c) of this section. The petitioner shall, within five calendar days of delivery of the division director's notice, deliver to the division director all documentary evidence that the petitioner will introduce and identification of all witnesses who may testify at the time of the hearing, if any, relating to petitioner's claim under subsection (c) of this section. At any SOAH hearing on petitioner's claim, both parties shall be limited to the documentary evidence delivered and witnesses disclosed under this subsection.

(e) SOAH shall have jurisdiction to determine a petitioner's claim asserted under subsection (c) of this section only if the ground of protest for which the documents at issue were submitted is referred to SOAH as otherwise provided under this subchapter. The Administrative Law Judge's (ALJ's) determination shall be limited to whether or not the documents at issue are admissible.

*§9.4314. Administrative Law Judge's Powers.*

(a) The Administrative Law Judge (ALJ) shall conduct a protest hearing in a manner insuring fairness, the reliability of evidence, and the timely completion of the hearing. The ALJ shall have the authority necessary to receive and consider evidence as provided under this subchapter and propose decisions only on the issues referred by the comptroller.

(b) The comptroller has the burden to prove the accuracy of comptroller's findings under Government Code, §403.302(g) or (h).

(c) The ALJ's authority includes, but is not limited to, the following:

(1) rule on motions and the admissibility of evidence;

(2) join related protests for hearing;

(3) conduct a single hearing that provides for:

(A) participation by the affected school district(s) and any eligible property owner that has filed a valid and timely petition, if the hearing concerns the comptroller's preliminary findings under Government Code, §403.302(g); or

(B) participation by the affected school district(s), and the commissioner of education, and any eligible property owner that has filed a valid and timely petition, if the hearing concerns the findings of an audit of a school district's taxable property value conducted pursuant to Government Code, §403.302(h);

(4) conduct oral hearings in an orderly manner and expel from any proceeding any individuals who, after an appropriate warning, fail to comport themselves in a manner befitting the proceeding and continue with the proceeding, hear evidence, and render a decision on the protest;

(5) administer oaths to all persons presenting testimony;

(6) examine witnesses and comment on the evidence;

(7) ensure that evidence, argument, and testimony are introduced and presented expeditiously;

(8) refuse to hear arguments that are repetitious, not confined to issues referred to State Office of Administrative Hearings (SOAH) by the comptroller pursuant to this subchapter, not related to the evidence, or that constitute mere personal criticism;

(9) accept and note any petitioner's waiver of any right granted by this subchapter;

(10) limit each oral hearing to two hours for presentation of evidence and argument or extend the two-hour time limit in the interest of a full and fair hearing; and

(11) exercise any other powers necessary or convenient to carry out the ALJ's responsibilities and to ensure timely certification of changes in preliminary findings to the commissioner of education.

(d) The ALJ shall take official notice of the written policies and procedures of the comptroller pertaining to the property value study.

(e) The ALJ may entertain motions for dismissal at any time as requested by the comptroller. Grounds for dismissal shall include, but are not limited to, the following:

(1) failure to prosecute;

(2) unnecessary duplication of proceedings or res judicata;

(3) withdrawal of protest;

(4) moot questions or obsolete petition; or

(5) the comptroller has certified amended preliminary findings pursuant to this subchapter.

(f) The ALJ may grant a request to postpone an oral protest hearing if good cause is shown and doing so would not prevent timely certification of changes in preliminary findings to the commissioner of education. A request to postpone must be in writing, show good cause for the postponement, and be delivered five calendar days before the date the protest hearing is scheduled to begin. Good cause does not include a claim that the time periods established in this subchapter are too short to meet the deadline. If requested in writing by the petitioner and for good cause shown, the ALJ may waive the requirement that the request for postponement be made five calendar days in advance of the deadline.

(g) Except as otherwise provided in this subchapter, the ALJ in a protest may not communicate outside a protest hearing, directly or indirectly, with any agency, person, petitioner, or petitioner's agent regarding any issue of fact or law relating to the protest unless all parties in the protest have notice and opportunity to participate.

*§9.4315. Proposal for Decision After Oral Hearing.*

(a) The Administrative Law Judge (ALJ) shall prepare a proposal for decision that includes the ALJ's recommendations for final decision and the rationale supporting such recommendations.

(b) The ALJ shall serve the proposal for decision on the deputy comptroller, the petitioner, and the division director by facsimile, electronic mail, hand delivery, or overnight mail delivery service. An ALJ will forward a copy of the record to the deputy comptroller with any proposal for decision.

(c) A party to the protest that is adversely affected by the proposal for decision may, within seven calendar days after the date the proposed decision is sent by facsimile, electronic mail, hand delivery or is delivered to an overnight delivery service, file with the deputy comptroller exceptions to the proposal for decision. Exceptions filed pursuant to this subsection shall be filed with the comptroller's Special Counsel for Tax Hearings by facsimile or hand delivery and shall on the same date be served on all other parties to the protest by facsimile, hand delivery, or email. If exceptions are filed, all other parties may, within seven calendar days after the date the exceptions are filed, file replies to the exceptions. Replies filed pursuant to this subsection shall be filed with the comptroller's Special Counsel for Tax Hearings by facsimile or hand delivery and shall on the same date be served on all other parties to the protest by facsimile, hand delivery or email.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 6, 2011.

TRD-201100035
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: January 26, 2011
Proposal publication date: November 19, 2010
For further information, please call: (512) 475-0387

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# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

### CHAPTER 1. STATE MENTAL RETARDATION AUTHORITY RESPONSIBILITIES
### SUBCHAPTER D. ADMINISTRATIVE HEARINGS OF THE DEPARTMENT IN CONTESTED CASES

**40 TAC §§1.151 - 1.160, 1.162, 1.163**

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of Chapter 1, Subchapter D, consisting of §1.151, concerning purpose; §1.152, concerning applicability and scope of rules; §1.153, concerning definitions; §1.154, concerning administrative law judge; §1.155, concerning hearing guidelines; §1.156, concerning conduct of hearings--general requirements; §1.157, concerning prehearing procedure; §1.158, concerning evidence and depositions; §1.159, concerning deliberation; §1.160, concerning decisions; §1.162, concerning references; and §1.163, concerning distribution, without changes to the proposal as published in the October 22, 2010, issue of the *Texas Register* (35 TexReg 9480).

The repeal is adopted to delete rules that are no longer required in the DADS rule base. HHSC, on behalf of DADS, is proposing new rules that govern hearings under the Administrative Procedure Act (APA) elsewhere in this issue of the *Texas Register*.

DADS received no comments regarding adoption of the repeal.

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2011.

TRD-201100047
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: January 27, 2011
Proposal publication date: October 22, 2010
For further information, please call: (512) 438-3734

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### CHAPTER 91. HEARINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT

**40 TAC §§91.1 - 91.8**

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts new Chapter 91, consisting of §§91.1 - 91.8, concerning hearings under the Administrative Procedure Act (APA), without changes to the proposed text published in the October 22, 2010, issue of the *Texas Register* (35 TexReg 9487).

The new sections are adopted to provide rules governing certain issues related to hearings under the APA, Texas Government Code, Chapter 2001. The rules of the former Texas Department of Human Services governing hearings under the APA were administratively transferred to HHSC in September 2004, as 1 Texas Administrative Code (TAC) Chapter 357, Subchapter I, "Formal Appeals." This subchapter was repealed by HHSC and replaced with a new subchapter governing APA hearings, 1 TAC Chapter 357, Subchapter I, "Hearings Under the Administrative Procedure Act." The new HHSC rules state that certain hearing issues are governed by the rules of the "referring agency." DADS

is a referring agency and these rules address issues related to APA hearings.

DADS received no comments regarding adoption of the new sections.

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2011.

TRD-201100046
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: January 27, 2011
Proposal publication date: October 22, 2010
For further information, please call: (512) 438-3734

# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Employees Retirement System of Texas

**Title 34, Part 4**

The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 61, Terms and Phrases, in accordance with Chapter 815 of the Texas Government Code. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is Tuesday, February 22, 2011, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or adoption.

TRD-201100071
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: January 10, 2011

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The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 63, Board of Trustees, in accordance with Chapter 815 of the Texas Government Code. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is Tuesday, February 22, 2011, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or adoption.

TRD-201100072
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: January 10, 2011

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The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 65, Executive Director, in accordance with Chapter 815 of the Texas Government Code. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is Tuesday, February 22, 2011, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or adoption.

TRD-201100073
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: January 10, 2011

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The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 67, Hearings on Disputed Claims, in accordance with Chapter 815, Texas Government Code, and Chapter 1551, Texas Insurance Code. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is Tuesday, February 22, 2011, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or adoption.

TRD-201100074
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: January 10, 2011

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The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 85, Flexible Benefits, in accordance with Chapter 1551 of the Texas Insurance Code. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is Tuesday, February 22, 2011, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or adoption.

TRD-201100075
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: January 10, 2011

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The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 87, Deferred Compensation, in accordance with Chapter 609 of the Texas Government Code. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is Tuesday, February 22, 2011, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or adoption.

TRD-201100076
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: January 10, 2011

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §3.86(d)(1)

**Additional Acreage Assignment**
**For Fields with a Density Rule of 40 Acres or Less**

| Horizontal Drainhole Displacement, ft | Additional Acreage Allowed, acres |
|---|---|
| 100 to 585 | 20 |
| 586 to 1,170 | 40 |
| 1,171 to 1,755 | 60 |
| 1,756 to 2,340 | 80 |
| 2,341 to 2,925 | 100 |
| 2,926 to 3,510 | 120 |
| etc. - 585 ft increments | etc. - 20 acre increments |

**Additional Acreage Assignment**
**For Fields with a Density Rule Greater Than 40 Acres**

| Horizontal Drainhole Displacement, ft | Additional Acreage Allowed, acres |
|---|---|
| 150 to 827 | 40 |
| 828 to 1,654 | 80 |
| 1,655 to 2,481 | 120 |
| 2,482 to 3,308 | 160 |
| 3,309 to 4,135 | 200 |
| 4,136 to 4,962 | 240 |
| etc. - 827 ft increments | etc. - 40 acre increments |

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of the Attorney General

Child Support Guidelines - 2011 Tax Charts

Pursuant to §154.061(b) of the Texas Family Code, the Office of the Attorney General of Texas, as the Title IV-D agency, has promulgated the following tax charts to assist courts in establishing the amount of a child support order. These tax charts are applicable to employed and self-employed persons in computing net monthly income.

**INSTRUCTIONS FOR USE**

To use these tables, first compute the obligor's annual gross income. Then, recompute to determine the obligor's average monthly gross income. These tables provide a method for calculating "monthly net income" for child support purposes, subtracting from monthly gross income the social security taxes and the federal income tax withholding for a single person claiming one personal exemption and the standard deduction.

Thereafter, in many cases the guidelines call for a number of additional steps to complete the necessary calculations. For example, §§154.061 - 154.070 provide for appropriate additions to "income" as that term is defined for federal income tax purposes, and for certain subtractions from monthly net income, in order to arrive at the net resources of the obligor available for child support purposes. If necessary, one may compute an obligee's net resources using similar steps.

This agency hereby certifies that the tax charts have been reviewed by legal counsel and found to be within the agency's authority to publish.

**EMPLOYED PERSONS**
**2011 TAX CHART**

| Monthly Gross Wages | Social Security Taxes: Old-Age, Survivors and Disability Insurance Taxes (4.2%)* | Social Security Taxes: Hospital (Medicare) Insurance Taxes (1.45%)* | Federal Income Taxes** | Net Monthly Income |
|---|---|---|---|---|
| $100.00 | $4.20 | $1.45 | $0.00 | $94.35 |
| $200.00 | $8.40 | $2.90 | $0.00 | $188.70 |
| $300.00 | $12.60 | $4.35 | $0.00 | $283.05 |
| $400.00 | $16.80 | $5.80 | $0.00 | $377.40 |
| $500.00 | $21.00 | $7.25 | $0.00 | $471.75 |
| $600.00 | $25.20 | $8.70 | $0.00 | $566.10 |
| $700.00 | $29.40 | $10.15 | $0.00 | $660.45 |
| $800.00 | $33.60 | $11.60 | $0.83 | $753.97 |
| $900.00 | $37.80 | $13.05 | $10.83 | $838.32 |
| $1,000.00 | $42.00 | $14.50 | $20.83 | $922.67 |
| $1,100.00 | $46.20 | $15.95 | $30.83 | $1,007.02 |
| $1,200.00 | $50.40 | $17.40 | $40.83 | $1,091.37 |
| $1,256.67*** | $52.78 | $18.22 | $46.50 | $1,139.17 |
| $1,300.00 | $54.60 | $18.85 | $50.83 | $1,175.72 |
| $1,400.00 | $58.80 | $20.30 | $60.83 | $1,260.07 |
| $1,500.00 | $63.00 | $21.75 | $70.83 | $1,344.42 |
| $1,600.00 | $67.20 | $23.20 | $85.83 | $1,423.77 |
| $1,700.00 | $71.40 | $24.65 | $100.83 | $1,503.12 |
| $1,800.00 | $75.60 | $26.10 | $115.83 | $1,582.47 |
| $1,900.00 | $79.80 | $27.55 | $130.83 | $1,661.82 |
| $2,000.00 | $84.00 | $29.00 | $145.83 | $1,741.17 |
| $2,100.00 | $88.20 | $30.45 | $160.83 | $1,820.52 |
| $2,200.00 | $92.40 | $31.90 | $175.83 | $1,899.87 |
| $2,300.00 | $96.60 | $33.35 | $190.83 | $1,979.22 |
| $2,400.00 | $100.80 | $34.80 | $205.83 | $2,058.57 |
| $2,500.00 | $105.00 | $36.25 | $220.83 | $2,137.92 |
| $2,600.00 | $109.20 | $37.70 | $235.83 | $2,217.27 |
| $2,700.00 | $113.40 | $39.15 | $250.83 | $2,296.62 |
| $2,800.00 | $117.60 | $40.60 | $265.83 | $2,375.97 |
| $2,900.00 | $121.80 | $42.05 | $280.83 | $2,455.32 |
| $3,000.00 | $126.00 | $43.50 | $295.83 | $2,534.67 |
| $3,100.00 | $130.20 | $44.95 | $310.83 | $2,614.02 |
| $3,200.00 | $134.40 | $46.40 | $325.83 | $2,693.37 |
| $3,300.00 | $138.60 | $47.85 | $340.83 | $2,772.72 |
| $3,400.00 | $142.80 | $49.30 | $355.83 | $2,852.07 |
| $3,500.00 | $147.00 | $50.75 | $370.83 | $2,931.42 |
| $3,600.00 | $151.20 | $52.20 | $385.83 | $3,010.77 |
| $3,700.00 | $155.40 | $53.65 | $404.17 | $3,086.78 |
| $3,800.00 | $159.60 | $55.10 | $429.17 | $3,156.13 |
| $3,900.00 | $163.80 | $56.55 | $454.17 | $3,225.48 |
| $4,000.00 | $168.00 | $58.00 | $479.17 | $3,294.83 |
| $4,250.00 | $178.50 | $61.63 | $541.67 | $3,468.20 |
| $4,500.00 | $189.00 | $65.25 | $604.17 | $3,641.58 |
| $4,750.00 | $199.50 | $68.88 | $666.67 | $3,814.95 |
| $5,000.00 | $210.00 | $72.50 | $729.17 | $3,988.33 |
| $5,250.00 | $220.50 | $76.13 | $791.67 | $4,161.70 |
| $5,500.00 | $231.00 | $79.75 | $854.17 | $4,335.08 |
| $5,750.00 | $241.50 | $83.38 | $916.67 | $4,508.45 |
| $6,000.00 | $252.00 | $87.00 | $979.17 | $4,681.83 |
| $6,250.00 | $262.50 | $90.63 | $1,041.67 | $4,855.20 |
| $6,500.00 | $273.00 | $94.25 | $1,104.17 | $5,028.58 |
| $6,750.00 | $283.50 | $97.88 | $1,166.67 | $5,201.95 |
| $7,000.00 | $294.00 | $101.50 | $1,229.17 | $5,375.33 |
| $7,500.00 | $315.00 | $108.75 | $1,354.17 | $5,722.08 |
| $8,000.00 | $336.00 | $116.00 | $1,486.42 | $6,061.58 |
| $8,500.00 | $357.00 | $123.25 | $1,626.42 | $6,393.33 |
| $9,000.00 | $373.80**** | $130.50 | $1,766.42 | $6,729.28 |
| $9,500.00 | $373.80 | $137.75 | $1,906.42 | $7,082.03 |
| $10,000.00 | $373.80 | $145.00 | $2,046.42 | $7,434.78 |
| $10,092.44***** | $373.80 | $146.34 | $2,072.30 | $7,500.00 |
| $10,500.00 | $373.80 | $152.25 | $2,186.42 | $7,787.53 |
| $11,000.00 | $373.80 | $159.50 | $2,326.42 | $8,140.28 |
| $11,500.00 | $373.80 | $166.75 | $2,466.42 | $8,493.03 |
| $12,000.00 | $373.80 | $174.00 | $2,606.42 | $8,845.78 |
| $12,500.00 | $373.80 | $181.25 | $2,746.42 | $9,198.53 |
| $13,000.00 | $373.80 | $188.50 | $2,886.42 | $9,551.28 |
| $13,500.00 | $373.80 | $195.75 | $3,026.42 | $9,904.03 |
| $14,000.00 | $373.80 | $203.00 | $3,166.42 | $10,256.78 |
| $14,500.00 | $373.80 | $210.25 | $3,306.42 | $10,609.53 |
| $15,000.00 | $373.80 | $217.50 | $3,446.42 | $10,962.28 |

**Footnotes to Employed Persons 2011 Tax Chart:**

* An employed person not subject to the Old-Age, Survivors and Disability Insurance/Hospital (Medicare) Insurance taxes will be allowed the reductions reflected in these columns, unless it is shown that such person has no similar contributory plan such as teacher retirement, federal railroad retirement, federal civil service retirement, etc.

** These amounts represent one-twelfth (1/12) of the annual federal income tax calculated for a single taxpayer claiming one personal exemption ($3,700.00) and taking the standard deduction ($5,800.00).

*** The amount represents one-twelfth (1/12) of the gross income of an individual earning the federal minimum wage ($7.25 per hour) for a 40-hour week for a full year. $7.25 per hour x 40 hours per week x 52 weeks per year equals $15,080.00 per year. One-twelfth (1/12) of $15,080.00 equals $1,256.67.

**** For annual gross wages above $106,800.00, this amount represents a monthly average of the Old-Age, Survivors and Disability Insurance tax based on the 2011 maximum Old-Age, Survivors and Disability Insurance tax of $4,485.60 per person (4.2% of the first $106,800.00 of annual gross wages equals $4,485.60). One-twelfth (1/12) of $4,485.60 equals $373.80.

***** This amount represents the point where the monthly gross wages of an employed individual would result in $7,500.00 of net resources.

* * * * * * * * * * * * * * * * * * * * * * *

**References Relating to Employed Persons 2011 Tax Chart:**

1. Old-Age, Survivors and Disability Insurance Tax

   (a) Contribution Base

      (1) Social Security Administration's notice dated November 19, 2010 appearing in 75 Fed. Reg. 74123 (November 30, 2010)

      (2) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3121(a))

      (3) Section 230 of the Social Security Act, as amended (42 U.S.C. § 430)

   (b). Tax Rate

      (1) Section 3101(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3101(a))

      (2) Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312 (HR 4853), Section 601(a)(2), 124 Stat. 3296, 3309 (2010)

2. Hospital (Medicare) Insurance Tax

   (a) Contribution Base

(1) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3121(a))

(2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13207, 107 Stat. 312, 467-69 (1993)

(b) Tax Rate

(1) Section 3101(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3101(b))

3. Federal Income Tax

(a) Tax Rate Schedule for 2011 for Single Taxpayers

(1) Revenue Procedure 2011-12, Section 2.01, Table 3 which appears in Internal Revenue Bulletin 2011-02, dated January 10, 2011

(2) Section 1(c), (f) and (i) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1(c), 1(f), 1(i))

(b) Standard Deduction

(1) Revenue Procedure 2011-12, Section 2.05(1), which appears in Internal Revenue Bulletin 2011-02, dated January 10, 2011

(2) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 63(c))

(c) Personal Exemption

(1) Revenue Procedure 2011-12, Section 2.07, which appears in Internal Revenue Bulletin 2011-02, dated January 10, 2011

(2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 151(d))

**SELF-EMPLOYED PERSONS**
**2011 TAX CHART**

| Monthly Net Earnings From Self-Employment * | Social Security Taxes: Old-Age, Survivors and Disability Insurance Taxes (10.4%)** | Social Security Taxes: Hospital (Medicare) Insurance Taxes (2.9%)** | Federal Income Taxes*** | Net Monthly Income |
|---|---|---|---|---|
| $100.00 | $9.60 | $2.68 | $0.00 | $87.72 |
| $200.00 | $19.21 | $5.36 | $0.00 | $175.43 |
| $300.00 | $28.81 | $8.03 | $0.00 | $263.16 |
| $400.00 | $38.42 | $10.71 | $0.00 | $350.87 |
| $500.00 | $48.02 | $13.39 | $0.00 | $438.59 |
| $600.00 | $57.63 | $16.07 | $0.00 | $526.30 |
| $700.00 | $67.23 | $18.75 | $0.00 | $614.02 |
| $800.00 | $76.84 | $21.43 | $0.00 | $701.73 |
| $900.00 | $86.44 | $24.10 | $4.48 | $784.98 |
| $1,000.00 | $96.04 | $26.78 | $13.77 | $863.41 |
| $1,100.00 | $105.65 | $29.46 | $23.06 | $941.83 |
| $1,200.00 | $115.25 | $32.14 | $32.36 | $1,020.25 |
| $1,300.00 | $124.86 | $34.82 | $41.65 | $1,098.67 |
| $1,400.00 | $134.46 | $37.49 | $50.95 | $1,177.10 |
| $1,500.00 | $144.07 | $40.17 | $60.24 | $1,255.52 |
| $1,600.00 | $153.67 | $42.85 | $69.53 | $1,333.95 |
| $1,700.00 | $163.27 | $45.53 | $82.82 | $1,408.38 |
| $1,800.00 | $172.88 | $48.21 | $96.76 | $1,482.15 |
| $1,900.00 | $182.48 | $50.88 | $110.70 | $1,555.94 |
| $2,000.00 | $192.09 | $53.56 | $124.64 | $1,629.71 |
| $2,100.00 | $201.69 | $56.24 | $138.58 | $1,703.49 |
| $2,200.00 | $211.30 | $58.92 | $152.52 | $1,777.26 |
| $2,300.00 | $220.90 | $61.60 | $166.46 | $1,851.04 |
| $2,400.00 | $230.51 | $64.28 | $180.40 | $1,924.81 |
| $2,500.00 | $240.11 | $66.95 | $194.35 | $1,998.59 |
| $2,600.00 | $249.71 | $69.63 | $208.29 | $2,072.37 |
| $2,700.00 | $259.32 | $72.31 | $222.23 | $2,146.14 |
| $2,800.00 | $268.92 | $74.99 | $236.17 | $2,219.92 |
| $2,900.00 | $278.53 | $77.67 | $250.11 | $2,293.69 |
| $3,000.00 | $288.13 | $80.34 | $264.05 | $2,367.48 |
| $3,100.00 | $297.74 | $83.02 | $277.99 | $2,441.25 |
| $3,200.00 | $307.34 | $85.70 | $291.93 | $2,515.03 |
| $3,300.00 | $316.95 | $88.38 | $305.87 | $2,588.80 |
| $3,400.00 | $326.55 | $91.06 | $319.81 | $2,662.58 |
| $3,500.00 | $336.15 | $93.74 | $333.75 | $2,736.36 |
| $3,600.00 | $345.76 | $96.41 | $347.69 | $2,810.14 |
| $3,700.00 | $355.36 | $99.09 | $361.63 | $2,883.92 |
| $3,800.00 | $364.97 | $101.77 | $375.57 | $2,957.69 |
| $3,900.00 | $374.57 | $104.45 | $389.51 | $3,031.47 |
| $4,000.00 | $384.18 | $107.13 | $408.53 | $3,100.16 |
| $4,250.00 | $408.19 | $113.82 | $466.62 | $3,261.37 |
| $4,500.00 | $432.20 | $120.52 | $524.70 | $3,422.58 |
| $4,750.00 | $456.21 | $127.21 | $582.79 | $3,583.79 |
| $5,000.00 | $480.22 | $133.91 | $640.88 | $3,744.99 |
| $5,250.00 | $504.23 | $140.60 | $698.96 | $3,906.21 |
| $5,500.00 | $528.24 | $147.30 | $757.05 | $4,067.41 |
| $5,750.00 | $552.25 | $153.99 | $815.13 | $4,228.63 |
| $6,000.00 | $576.26 | $160.69 | $873.22 | $4,389.83 |
| $6,250.00 | $600.28 | $167.38 | $931.30 | $4,551.04 |
| $6,500.00 | $624.29 | $174.08 | $989.39 | $4,712.24 |
| $6,750.00 | $648.30 | $180.78 | $1,047.47 | $4,873.45 |
| $7,000.00 | $672.31 | $187.47 | $1,105.56 | $5,034.66 |
| $7,500.00 | $720.33 | $200.86 | $1,221.73 | $5,357.08 |
| $8,000.00 | $768.35 | $214.25 | $1,337.90 | $5,679.50 |
| $8,500.00 | $816.37 | $227.64 | $1,458.31 | $5,997.68 |
| $9,000.00 | $864.40 | $241.03 | $1,588.42 | $6,306.15 |
| $9,500.00 | $912.42 | $254.42 | $1,718.53 | $6,614.63 |
| $10,000.00 | $925.60**** | $267.82 | $1,854.46 | $6,952.12 |
| $10,500.00 | $925.60 | $281.21 | $1,992.58 | $7,300.61 |
| $10,786.08***** | $925.60 | $288.87 | $2,071.61 | $7,500.00 |
| $11,000.00 | $925.60 | $294.60 | $2,130.71 | $7,649.09 |
| $11,500.00 | $925.60 | $307.99 | $2,268.83 | $7,997.58 |
| $12,000.00 | $925.60 | $321.38 | $2,406.96 | $8,346.06 |
| $12,500.00 | $925.60 | $334.77 | $2,545.08 | $8,694.55 |
| $13,000.00 | $925.60 | $348.16 | $2,683.21 | $9,043.03 |
| $13,500.00 | $925.60 | $361.55 | $2,821.34 | $9,391.51 |
| $14,000.00 | $925.60 | $374.94 | $2,959.46 | $9,740.00 |
| $14,500.00 | $925.60 | $388.33 | $3,097.59 | $10,088.48 |
| $15,000.00 | $925.60 | $401.72 | $3,235.71 | $10,436.97 |

**Footnotes to Self-Employed Persons 2011 Tax Chart:**

* Determined without regard to Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12)) (the "Code").

** In calculating each of the Old-Age, Survivors and Disability Insurance tax and the Hospital (Medicare) Insurance tax, net earnings from self-employment are reduced by the deduction under Section 1402(a)(12) of the Code. The deduction under Section 1402(a)(12) of the Code is equal to net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) multiplied by one-half (1/2) of the sum of the Old-Age, Survivors and Disability Insurance tax rate (determined without regard to the temporary employee payroll tax cut as described by section 601(b)(1) of the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010") (12.4%) and the Hospital (Medicare) Insurance tax rate (2.9%). The sum of these rates is 15.3% (12.4% + 2.9% = 15.3%). One-half (1/2) of the combined rate is 7.65% (15.3% x 1/2 = 7.65%). The deduction can be computed by multiplying the net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) by 92.35%. This gives the same deduction as multiplying the net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) by 7.65% and then subtracting the result.

For example, the Social Security taxes imposed on monthly net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) of $2,500.00 are calculated as follows:

(i) Old-Age, Survivors and Disability Insurance Taxes:

$2,500.00 x 92.35% x 10.4% = $240.11

(ii) Hospital (Medicare) Insurance Taxes:

$2,500.00 x 92.35% x 2.9% = $66.95

*** These amounts represent one-twelfth (1/12) of the annual federal income tax calculated for a single taxpayer claiming one personal exemption ($3,700.00) and taking the standard deduction ($5,800.00).

In calculating the annual federal income tax, gross income is reduced by the deduction under Section 164(f) of the Code. The deduction under Section 164(f) of the Code for 2011 is computed at the rate of 59.6 percent of the OASDI tax paid plus one half of the Hospital (Medicare) Insurance tax paid as described by section 601(b)(2) of the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010." For example, monthly net earnings from self-employment of $8,500.00 times 12 months equals $102,000.00. The Old-Age, Survivors and Disability Insurance taxes imposed by Section 1401 of the Code for the taxable year equal $9,796.49 ($102,000.00 x .9235 x 10.4% = $9,796.49). The Hospital (Medicare) Insurance taxes imposed by Section 1401 of the Code for the taxable year equal $2,731.71 ($102,000.00 x .9235 x 2.9% = $2,731.71). The deduction under Section 164(f) of the Code for 2011 is equal to $7,204.57 (($9,796.49 x 0.596) + ($2,731.72 x 0.5) = $7,204.57).

**** For annual net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) above $106,800.00, this amount represents a monthly average of the Old-Age, Survivors and Disability Insurance tax based on the 2011 maximum Old-

Age, Survivors and Disability Insurance tax of $11,107.20 per person (10.4% of the first $106,800.00 of net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) equals $11,107.20). One-twelfth (1/12) of $11,107.20 equals $925.60.

***** This amount represents the point where the monthly net earnings from self-employment of a self-employed individual would result in $7,500.00 of net resources.

* * * * * * * * * * * * * * * * * * * * * *

**References Relating to Self-Employed Persons 2011 Tax Chart:**

1. Old-Age, Survivors and Disability Insurance Tax

   (a) Contribution Base

      (1) Social Security Administration's notice dated November 19, 2010 appearing in 75 Fed. Reg. 74123 (November 30, 2010)

      (2) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(b))

      (3) Section 230 of the Social Security Act, as amended (42 U.S.C. § 430)

   (b) Tax Rate

      (1) Section 1401(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1401(a))

      (2) Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312 (HR 4853), Section 601(a)(1), 124 Stat. 3296, 3309 (2010)

   (c) Deduction Under Section 1402(a)(12)

      (1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12))

      (2) Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312 (HR 4853), Section 601(b)(1), 124 Stat. 3296, 3309 (2010)

2. Hospital (Medicare) Insurance Tax

   (a) Contribution Base

      (1) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(b))

      (2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13207, 107 Stat. 312, 467-69 (1993)

(b) Tax Rate

(1) Section 1401(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1401(b))

(c) Deduction Under Section 1402(a)(12)

(1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12))

3. Federal Income Tax

(a) Tax Rate Schedule for 2011 for Single Taxpayers

(1) Revenue Procedure 2011-12, Section 2.01, Table 3 which appears in Internal Revenue Bulletin 2011-02, dated January 10, 2011

(2) Section 1(c), (f) and (i) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1(c), 1(f), 1(i))

(b) Standard Deduction

(1) Revenue Procedure 2011-12, Section 2.05(1), which appears in Internal Revenue Bulletin 2011-02, dated January 10, 2011

(1) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 63(c))

(c) Personal Exemption

(1) Revenue Procedure 2011-12, Section 2.07, which appears in Internal Revenue Bulletin 2011-02, dated January 10, 2011

(2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 151(d))

(d) Deduction Under Section 164(f)

(1) Section 164(f) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 164(f))

(2) Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312 (HR 4853), Section 601(b)(2), 124 Stat. 3296, 3309 (2010)

*For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.*

TRD-201100085
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: January 10, 2011

♦ ♦ ♦

## Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of December 22, 2010, through December 30, 2010. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on January 12, 2011. The public comment period for this project will close at 5:00 p.m. on February 11, 2011.

FEDERAL AGENCY ACTIONS:

**Applicant: 9550 Seawall Blvd., LLP;** Location: The project site is located at 9550 Seawall Boulevard, south of Scholes Field Airport, in Galveston, Galveston County, Texas. The project site can be located on the U.S.G.S. quadrangle map titled: Galveston, Texas. Approximate coordinates (NAD 83): Latitude 29.252 degrees; Longitude -94.856 degrees. Project Description: The applicant proposes to discharge approximately 10,900 cubic yards of sand to fill and grade approximately 0.495 acre of palustrine emergent wetlands for the purpose of constructing a hotel complex and associated infrastructure on Galveston's Seawall Boulevard. To compensate for the impacts, the applicant proposes to purchase and permanently protect a 4-acre site composed of 3.1 acres of brackish palustrine wetlands an 0.9 acre of upland. The applicant considered two off-site alternatives which were deemed too expensive and three onsite alternative plans. One on-site plan impacted more wetlands. The other on-site plan did not meet Fire Marshal safety codes. The third is the applicant's preferred alternative. CMP Project No.: 11-0227-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00884 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: Texas City Terminal Railway Company;** Location: The project site is located in the Turning Basin of the Port of Texas City, in Texas City, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Virginia Point, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 316691; Northing: 3249853. Project Description: The applicant proposes to amend their current permit to include siltblade and water injection dredging as alternative methods for yearly ongoing maintenance dredging within the docks at the Port of Texas City. The material dredged by these methods will be distributed over the berthing area for these docks. For those dock berthing areas that cannot accommodate the estimated dredged material, a sediment basin will be constructed to contain this material. The material from the sediment basin construction will be placed in previously authorized dredged material placement areas. A total of 12,169 cubic yards (2.80 acres) will be dredged annually from the site. The footprint of the placement area for the currently proposed dredging activities is 47.51 acres. The total impacts, dredging and placement of material, to waters of the U.S. are 50.31 acres. CMP Project No.: 11-0228-F1. Type of Application: U.S.A.C.E. permit application #SWG-2001-01855 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: City of Jamaica Beach;** Location: The project site is located in the City of Jamaica Beach, off FM 3005, between the Gulf of Mexico and West Bay in Galveston County, Texas. The project site can be located on the U.S.G.S. quadrangle map titled: Lake Como, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 307901; Northing: 3230173. Project Description: The applicant proposes to conduct maintenance excavation within an approximate 189.77-acre project area and the regrading and stabilizing of 2,852 linear feet of open roadside ditches with articulated block material (ACB). The proposed maintenance project will impact approximately 0.416 acres of jurisdictional wetlands and approximately 0.361 acres of other waters of the United States that are within the limits of the existing ditches. The applicant has identified an upland placement area available to accept the material; the site is located at 7711 Broadway in Galveston, Texas. ACB material will allow recolonization of indigenous wetlands, therefore the applicant considers its use both avoidance/minimization of impacts and self-mitigating. Other alternatives would have greater impact on the aquatic environment. CMP Project No.: 11-0229-F1. Type of Application: U.S.A.C.E. permit application #SWG-2010-00774 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Kate Zultner, Consistency Review Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or via email at kate.zultner@glo.texas.gov. Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201100040
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: January 7, 2011

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## Comptroller of Public Accounts

Notice of Contract Awards

The Comptroller of Public Accounts (Comptroller), State Energy Conservation Office, announces the following contract awards under Request for Proposals #195f, for professional energy engineering services for the Stimulus Grant Program:

The notice of Request for Proposals (RFP #195f) was published in the November 20, 2009, issue of the *Texas Register* (34 TexReg 8391).

The contractors will provide professional energy engineering services for the State Energy Program, the Energy Efficiency and Conservation Block Grant Program, the State Energy Efficient Appliance Rebate Program, and the Energy Assurance Program.

The following contracts were awarded:

Kinsmans & Associates, Consulting Engineers, 8553 Ferndale Road, Suite 102, Dallas, Texas 75238. The total amount of the contract is not to exceed $450,000. The term of the contract is February 26, 2010 through September 30, 2012, with option to renew for one (1) additional one-year term;

Texas Energy Engineering Services, Inc., 1301 Capital of Texas Highway, Suite B325, Austin, Texas 78746. The total amount of the contract is not to exceed $350,000. The term of the contract is February 26, 2010 through September 30, 2012, with option to renew for one (1) additional one-year term;

Jacobs Engineering Group, Inc., 777 Main Street, Fort Worth, Texas 76102. The total amount of the contract is not to exceed $300,000. The term of the contract is April 22, 2010 through September 30, 2012, with option to renew for one (1) additional one-year term;

Camp Dresser & McKee, Inc., 12357-A Riata Trace Parkway, Austin, Texas 78727. The total amount of the contract is not to exceed $450,000. The term of the contract is January 7, 2011 through December 31, 2011, with option to renew for two (2) additional one-year terms, one year at a time; and

Frontier Associates LLC, 1515 S. Capital of Texas Highway, Suite 110, Austin, Texas 78746. The total amount of the contract is not to exceed $100,000. The term of the contract is May 27, 2010 through December 31, 2012, with option to renew for two (2) additional one-year terms, one year at a time.

TRD-201100113
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: January 11, 2011

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## Notice of Request for Proposals

Pursuant to Chapter 403, §403.301 and §403.3011, and Chapter 2156, §2156.121, Texas Government Code; and Chapter 54, Subchapter F, Texas Education Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Prepaid Higher Education Tuition Board (Board), announces the issuance of a Request for Proposals (RFP #199e) from qualified, independent individuals and firms to provide Broad All-Capital Core Passive U.S. Equity investment management and related services to the Comptroller and Board for the Texas Guaranteed Tuition Program (Plan). The successful respondent(s) will assist Comptroller and the Board in investing and managing the Plan funds according to the new mandate and provide additional, reasonably-related services for the Plan funds. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about June 1, 2011, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th Street, Room 201, Austin, Texas 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pickup at the above-referenced address on Friday, January 21, 2011, after 10:00 a.m., Central Time (CT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Electronic State Business Daily at: http://esbd.cpa.state.tx.us after 10:00 a.m. CT on Friday, January 21, 2011.

Non-Mandatory Letters of Intent and Questions: All Non-Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 463-3669, not later than 2:00 p.m. CT, on January 28, 2011. Official responses to questions received by the foregoing deadline will be posted electronically on the Electronic State Business Daily no later than Friday, February 4, 2011, or as soon thereafter as practical. Non-Mandatory Letters of Intent or Questions received after the deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be received in the Assistant General Counsel's Office at the address specified above no later than 2:00 p.m. CT, on Friday, February 11, 2011. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit proposals by the foregoing deadline. Respondents shall be solely responsible for confirming the timely receipt of proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation based on the evaluation criteria and procedures set forth in the RFP. The Board will make the final decision regarding the award of a contract, if any. The Board and Comptroller reserve the right to award one or more contracts under this RFP. The Board and Comptroller reserve the right to accept or reject any or all proposals submitted. The Board and Comptroller are under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The Board and Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - January 21, 2011, after 10:00 a.m. CT; Non-Mandatory Letters of Intent and Questions Due - January 28, 2011, 2:00 p.m. CT; Official Responses to Questions Posted - February 4, 2011, or as soon thereafter as practical; Proposals Due - February 11, 2011, 2:00 p.m. CT; Contract Execution - June 1, 2011, or as soon thereafter as practical; Commencement of Project Activities - June 1, 2011, or as soon thereafter as practical.

TRD-201100119
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: January 12, 2011

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## Notice of Request for Proposals

Pursuant to Chapters 403, 447 and 2305, and Chapter 2254, Subchapter B, Texas Government Code; and the State Energy Plan and related legal authority and regulations, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office, announces this Request for Proposals (RFP #200a) and invites proposals from qualified interested firms and organizations to assist Comptroller and the State Energy Conservation Office by developing, drafting and implementing a Best Practices Guide to Energy Efficiency for Locally-Owned Municipal Utilities and Electric Cooperatives (Guide). The Comptroller reserves the right to award more than one contract under the terms of this RFP. If a contract award is made under the terms of the RFP, Successful Respondent will be expected to begin performance of the contract on or about March 1, 2011, or as soon thereafter as practical.

Background: The State Energy Conservation Office of the Comptroller has been awarded a grant from the United States Department of Energy (DOE), entitled Funding Opportunity DE-FOA-0000251-Accelerating Energy Efficiency Program Deployment in Locally-Governed Electric Service Areas (Grant). This grant funding is awarded to support the development and creation of a Best Practices Guide to Energy Efficiency at the local level. The Grant period is October 1, 2010 through September 30, 2013.

Contact: Interested firms and organizations should submit questions about this RFP or the submission of a proposal in writing to the attention of William Clay Harris, Assistant General Counsel, Contracts, via facsimile to: (512) 463-3669. The RFP will be available electronically after 10:00 a.m. Central Time (CT) on Friday, January 21, 2011. Comptroller made the RFP available by posting the entire solicitation document and attachments on the Electronic State Business Daily (ESBD) at: http://esbd.cpa.state.tx.us after 10:00 a.m. CT on Friday, January 21, 2011.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-Mandatory Letters of Intent must be received at the above-referenced address (Issuing Office) not later than 2:00 p.m. CT on Friday, January 28, 2011. Prospective applicants are encouraged to fax Non-Mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. Non-Mandatory Letters of Intent must be addressed to the attention of Mr. Harris and must be signed by an official of the entity. On or about Friday, February 4, 2011, or as soon thereafter as practical, Comptroller expects to post responses to questions on the ESBD. Late Non-Mandatory Letters of Intent and Questions will not be considered under any circumstances. Respondents shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be delivered to the Issuing Office to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. CT, on Friday, February 11, 2011. Late proposals will not be considered under any circumstances; Respondents shall be solely responsible for verifying timely receipt of proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated by an evaluation committee under the criteria outlined in the RFP. The Comptroller will make the final decision. The Comptroller reserves the right to accept or reject any or all proposals submitted in response to this RFP. The Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to the RFP.

The anticipated schedule of events pertaining to this RFP is as follows: Issuance of RFP - January 21, 2011, after 10:00 a.m. CT; Non-Mandatory Letters of Intent and Questions Due - January 28, 2011, 2:00 p.m. CT; Official Responses to Questions posted - February 4, 2011; Proposals Due - February 11, 2011, 2:00 p.m. CT; Contract Execution - March 1, 2011, or as soon thereafter as practical; Commencement of Project - March 1, 2011, or as soon thereafter as practical.

TRD-201100120
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: January 12, 2011

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## Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/17/11 - 01/23/11 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/17/11 - 01/23/11 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-201100103
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 10, 2011

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## Texas Education Agency

Request for Proficiency Tests for the Assessment of Limited English Proficient Students

Description. The Texas Education Agency (TEA) is notifying assessment publishers that proficiency assessments and/or achievement tests may be submitted for review for the List of State Approved Tests for the Assessment of Limited English Proficient Students. Texas Education Code (TEC), §29.056(a)(2), authorizes the TEA to compile a list of approved assessments for the purposes of identifying students as limited English proficient for entry into or exit (when appropriate) from bilingual education and/or English as a second language (ESL) programs; annually assessing oral language proficiency in English and Spanish when required; and measuring reading and writing proficiency in English and Spanish for program placement. The state-approved tests placed on the list must be based on scientific research and must measure oral language proficiency in listening and speaking in English and Spanish from Prekindergarten (PK)-Grade 12. Assessments must also measure reading and writing in English and Spanish from PK-Grade 12.

Norm-referenced standardized achievement tests in English will be used for identification and entry into programs and for exit from programs for Grades 1 and 2 and may be used as formative assessments.

Norm-referenced standardized achievement tests in Spanish may be used for placement or language development purposes only. All tests to be included on the *List of State Approved Tests for the Assessment of Limited English Proficient Students* must be re-normed at least every eight years to meet the criteria specified in the TEC, §39.032, which requires that standardization norms not be more than eight years old at the time the test is administered. Only new assessments, newly normed assessments, and/or modified/updated assessments must be submitted for evaluation at this time.

The Assessment Committee, comprised of stakeholders from throughout the state, will review and approve the 2011 - 2012 *List of State Approved Tests for the Assessment of Limited English Proficient Students*.

Selection Criteria. Assessment publishers will be responsible for submitting tests that they wish to be reviewed for consideration for inclusion on the 2011 - 2012 *List of State Approved Tests for the Assessment of Limited English Proficient Students*. All tests submitted for review must be based on scientific research and must measure oral language proficiency in listening and speaking in English and Spanish

from PK-Grade 12. Assessments must measure reading and writing in English and Spanish from PK-Grade 12 and must meet the state criteria for reliability and validity. Therefore, technical manuals must also be submitted and must be available for the review of assessments to be held on Friday, February 25, 2011. Assessments must also measure specific proficiency levels in oral language, reading, and writing in English and Spanish. Assessment instruments (English and Spanish) submitted for review will be grouped in the following categories: (1) Oral Language Proficiency Tests in English in Listening and Speaking domains; (2) Oral Language Proficiency Tests in Spanish in Listening and Speaking domains; (3) Reading and Writing Proficiency in English; and (4) Reading and Writing Proficiency in Spanish. Publishers are not required to submit proposals for all categories.

Proposals must be submitted and presented on Friday, February 25, 2011, to be considered for inclusion on the 2011 - 2012 *List of State Approved Tests for the Assessment of Limited English Proficient Students*. Assessment publishers will be required to attend the review of the assessments on Friday, February 25, 2011, which will be held at the William B. Travis Building, Room G-100, PDC7, 1701 North Congress Avenue, Austin, Texas. Complete official sample test copies in English and Spanish with comprehensive explanations, including (1) scoring information; (2) norming data information, including ethnicity, gender, grade level, and geographic region; and (3) technical manuals with validity and reliability information, must be presented at that time. Only materials presented on Friday, February 25, 2011, will be considered for approval. Publishers must be available all day at the request of the committee and must make arrangements to pick up all materials at the end of the day. Any materials and/or revisions submitted after the deadline cannot be reviewed until the following year.

Further Information. For clarifying information, contact Susie Coultress, Director of Bilingual/ESL, Texas Education Agency, (512) 463-9581.

TRD-201100121
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: January 12, 2011

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## Employees Retirement System of Texas

### Contract Award Announcement

This contract award notice is being filed by the Employees Retirement System of Texas (ERS) regarding a contract award for private markets software and back office services. The selected contractor is eFront Financial Solutions, Inc. (eFront), 11 East 44th Street, New York, NY 10017. The license fees shall be $250,000.00. The annual maintenance fees will be $62,500.00 and annual hosting will be $50,000.00. The daily rate for implementation and consulting fees will be $1,500.00 per day. ERS will reimburse eFront for appropriate and reasonable travel time and expense within the limits in the state of Texas travel guidelines. The contract was executed on December 30, 2010, and is for a term of December 30, 2010, through December 29, 2013.

TRD-201100087
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: January 10, 2011

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## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 21, 2011.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 21, 2011.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: 226 CORPORATION dba Hot Pit Pub & Grub; DOCKET NUMBER: 2010-1392-PWS-E; IDENTIFIER: RN105725774; LOCATION: Midland County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 Texas Administrative Code (TAC) §290.109(c)(2)(A)(i) and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect routine distribution water samples for coliform analysis; PENALTY: $2,141; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(2) COMPANY: Arnold Billups dba A & M Mobile Home Park; DOCKET NUMBER: 2010-1437-PWS-E; IDENTIFIER: RN105963276; LOCATION: Jim Wells County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.42(b)(1), by failing to provide disinfection facilities for microbiological control and distribution protection; and 30 TAC §290.39(e)(1) and (m) and THSC, §341.035(c), by failing to provide notification to the commission prior to commencing operation of a PWS system and by failing to submit engineering plans and specifications for a PWS system prior to commencing operation; PENALTY: $550; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: City of Austin; DOCKET NUMBER: 2010-1328-EAQ-E; IDENTIFIER: RN102836822; LOCATION: Austin, Travis County; TYPE OF FACILITY: intersection improvement project; RULE VIOLATED: 30 TAC §213.4(j) and Water Pollution Abatement Plan (WPAP) 11-02052403, Standard Conditions Number 4, by failing to obtain approval of a modification to a WPAP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; and 30

TAC §213.4(k) and WPAP 11-02052403, Standard Conditions Number 13, by failing to provide written notification that the permanent best management practices were constructed as designed; PENALTY: $3,650; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 425-6010; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(4) COMPANY: BASF FINA Petrochemicals Limited Partnership; DOCKET NUMBER: 2010-1318-AIR-E; IDENTIFIER: RN100216977; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §115.241 and §122.143(4), Federal Operating Permit (FOP) Number O-02551, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to have an approved Stage II vapor recovery system; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), FOP Number O-02551, GTC, Special Condition (SC) Number 11A, Air Permit Numbers 36644, PSD-TX-903M2, and N-007M1, SC Number 1, and THSC, §382.085(b), by failing to maintain compliance with the permitted hourly nitrous oxide ($NO_x$) limit of 26.47 pounds per hour (lbs/hr); and 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), FOP Number O-02551, GTC, SC Number 11A, Air Permit Numbers 36644, PSD-TX-903M2, and N-007M1, SC Number 1, and THSC, §382.085(b), by failing to maintain compliance with the hourly $NO_x$ and carbon monoxide limits of 12.19 lbs/hr and 17.06 lbs/hr; PENALTY: $61,450; Supplemental Environmental Project (SEP) offset amount of $24,580 applied to Texas Air Quality Research Center at Lamar University - *Flare Specification and Air Quality Modeling;* ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: City of Beeville; DOCKET NUMBER: 2010-1681-PWS-E; IDENTIFIER: RN101419133; LOCATION: Beeville, Bee County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4), by failing to operate the disinfection equipment to continuously maintain a disinfectant residual of 0.5 milligrams per liter (mg/L) of chloramine throughout the distribution system at all times; PENALTY: $1,180; ENFORCEMENT COORDINATOR: Kelly Wisian, (512) 239-2570; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: City of Breckenridge; DOCKET NUMBER: 2010-1715-MWD-E; IDENTIFIER: RN102844917; LOCATION: Stephens County; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010040001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits for ammonia nitrogen ($NH_3N$); PENALTY: $7,875; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3100; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: Maria Valle dba Castro Texaco; DOCKET NUMBER: 2010-1629-PST-E; IDENTIFIER: RN102274354; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) for releases; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2545; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Chevron Phillips Chemical Company, LP; DOCKET NUMBER: 2010-1550-AIR-E; IDENTIFIER: RN102018322; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Flexible Permit Numbers 4437A, PSD-TX-808, and NO14M1, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $5,150; SEP offset amount of $2,060 applied to Barbers Hill Independent School District - Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: CLEERECO SERVICES, INC. dba Menard Chevron; DOCKET NUMBER: 2010-1387-PST-E; IDENTIFIER: RN102891363; LOCATION: Menard, Menard County; TYPE OF FACILITY: gasoline station used as a propane distribution center; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs; 30 TAC §334.49(a)(2) and the Code, §26.3475(d), by failing to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that corrosion protection is continuously provided to all underground metal components of the UST system; 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system; 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection; 30 TAC §334.50(b)(2)(B) and the Code, §26.3475(b), by failing to provide proper release detection for the suction piping associated with the USTs; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST; 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers, or catchment basins associated with a UST system; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; and 30 TAC §334.127(d), by failing to submit a notice of any change or additional information for the aboveground storage tank; PENALTY: $13,900; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(10) COMPANY: Commodore Cove Improvement District; DOCKET NUMBER: 2010-1788-MWD-E; IDENTIFIER: RN102286812; LOCATION: Brazoria County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010798001, Effluent Limitations and Monitoring Requirements Numbers 1, 3, and 6, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limitations for dissolved oxygen, pH, and total suspended solids (TSS); and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010798001, Monitoring and Reporting Requirements Number 1, by failing to submit results at the intervals specified in the permit; PENALTY: $4,417; ENFORCEMENT COORDINATOR: Marty Hott, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Brien F. Davis and Kirsten Davis; DOCKET NUMBER: 2010-1500-WR-E; IDENTIFIER: RN105982474; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: private pond; RULE VIOLATED: 30 TAC §297.11 and the Code, §11.121, by failing to obtain the required authorization prior to impounding, diverting, or using state water; PENALTY: $600; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76119-6951, (817) 588-5800.

(12) COMPANY: Faith West, Inc.; DOCKET NUMBER: 2010-1297-PWS-E; IDENTIFIER: RN101188795; LOCATION: Harris

County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide a public notification of the failure to sample; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B), by failing to collect a set of four repeat distribution coliform samples within 24 hours of being notified; and 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B), by failing to collect at least five routine distribution coliform samples during the month following a total coliform-positive sample result and by failing to provide public notice of the failure to sample; PENALTY: $2,280; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Ray L. Averyt dba Hilltop Mobile Home Park; DOCKET NUMBER: 2010-1256-PWS-E; IDENTIFIER: RN101439651; LOCATION: Tarrant County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to collect routine monitoring samples for coliform analysis and by failing to provide public notification for the failure to collect routine monitoring samples; PENALTY: $3,231; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: HUYNH & LE CORPORATION, INC.; DOCKET NUMBER: 2010-1190-PST-E; IDENTIFIER: RN101434082; LOCATION: Dickinson, Galveston County; TYPE OF FACILITY: USTs; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide corrosion protection for the UST system; and 30 TAC §334.54(b)(2), by failing to assure that, with the exception of vent lines, all piping, pumps, manways, tank access points, and ancillary equipment is capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: $5,700; ENFORCEMENT COORDINATOR: Marty Hott, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: KMCO, L.P.; DOCKET NUMBER: 2010-1446-AIR-E; IDENTIFIER: RN101613511; LOCATION: Crosby, Harris County; TYPE OF FACILITY: custom chemical distillation and manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(1), FOP Number O-01441, GTC, and THSC, §382.085(b), by failing to submit the permit compliance certification; PENALTY: $4,450; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: LODGE LUMBER COMPANY, INC.; DOCKET NUMBER: 2010-1677-PST-E; IDENTIFIER: RN101733343; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Johns Manville; DOCKET NUMBER: 2010-1352-IHW-E; IDENTIFIER: RN100213719; LOCATION: Cleburne, Johnson County; TYPE OF FACILITY: insulation manufacturing plant; RULE VIOLATED: 30 TAC §335.431 and 40 Code of Federal Regulations §268.3(a), by failing to prevent the dilution of a restricted waste as a substitute for treatment; PENALTY: $8,911; ENFORCEMENT COORDINATOR: Theresa Hagood, (512) 239-2540; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: M J H STAR ENTERPRISES, INC. dba Airline Food Mart; DOCKET NUMBER: 2010-1280-PST-E; IDENTIFIER: RN102022902; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment, vapor space manifolding, and dynamic back pressure; PENALTY: $3,184; ENFORCEMENT COORDINATOR: Cara Windle, (512) 239-2581; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: Neal's Lodges; DOCKET NUMBER: 2010-1419-PWS-E; IDENTIFIER: RN102692076; LOCATION: Concan, Uvalde County; TYPE OF FACILITY: campground and recreational vehicle park with a PWS; RULE VIOLATED: 30 TAC §290.109(f)(3) and §290.122(b)(2)(B) and THSC, §341.031(a), by failing to comply with the maximum contaminant level (MCL) for total coliform and by failing to provide public notification of the exceedance of the MCL for total coliform; and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification of the failure to conduct routine sampling; PENALTY: $1,958; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: NUECES WATER SUPPLY CORPORATION; DOCKET NUMBER: 2010-1518-PWS-E; IDENTIFIER: RN101261147; LOCATION: Nueces County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.45(f)(5), by failing to provide a purchase water contract that authorizes a maximum hourly production rate plus the actual service pump capacity of at last two gallons per minute (gpm) per connection; 30 TAC §290.46(d)(2)(B) and §290.110(b)(4), by failing to operate the disinfection equipment to maintain a minimum disinfectant residual of 0.5 mg/L of chloramines; and 30 TAC §290.121(b)(1)(A), by failing to provide a plant schematic that shows all water pumps, flow meters, unit processes, chemical feed points, and chemical monitoring points; PENALTY: $655; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(21) COMPANY: PAC-N-SAC STORES, INC. dba Pac-N-Sac 101; DOCKET NUMBER: 2010-1698-PST-E; IDENTIFIER: RN101499549; LOCATION: San Marcos, Hays County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2)(A)(ii)(I) and the Code, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the USTs; PENALTY: $2,978; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(22) COMPANY: PALLETIZED TRUCKING, INC.; DOCKET NUMBER: 2010-1533-PST-E; IDENTIFIER: RN101443661; LOCATION: Houston, Harris County; TYPE OF FACILITY: trucking company; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the USTs for releases; and 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide release detection for the piping associated with the USTs; PENALTY: $5,220; ENFORCEMENT COORDINATOR: Clinton

Sims, (512) 239-6933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: City of Robert Lee; DOCKET NUMBER: 2010-0417-MLM-E; IDENTIFIER: RN101920163 and RN101198174; LOCATION: Robert Lee, Coke County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and TPDES Permit Number WQ0013901001, Sludge Provisions, Section III.E and F(1), by failing to conduct paint filter liquid tests for sewage sludge; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0013901001, Sludge Provisions, by failing to timely submit the completed annual sludge report; 30 TAC §305.125(1) and TPDES Permit Number WQ0013901001, Monitoring and Reporting Requirements Number 3.a and Operational Requirements Number 5, by failing to monitor the facility's flow to ensure that the two-hour peak does not exceed 336 gpm; 30 TAC §305.125(1), TPDES Permit Number WQ0013901001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limits for $NH_3N$ and flow; 30 TAC §305.125(1) and TPDES Permit Number WQ0013901001, Monitoring and Reporting Requirements Number 3.c.i, by failing to monitor effluent as specified in the permit; 30 TAC §305.125(1) and §319.7(c) and TPDES Permit Number WQ0013901001, Monitoring and Reporting Requirements Number 3.b, by failing to maintain, provide, or make records available for review; 30 TAC §305.125(1) and TPDES Permit Number WQ0013901001, Monitoring and Reporting Requirements Number 1 and Operational Requirements Number 2, by failing to submit complete and accurate discharge monitoring reports (DMRs); 30 TAC §317.6(b)(1)(D), by failing to maintain a properly functioning self-contained breathing apparatus; 30 TAC §305.125(1) and §317.4(j)(9) and TPDES Permit Number WQ0013901001, Operational Requirements Number 1, by failing to properly maintain the embankments of the effluent holding pond; 30 TAC §305.125(1) and TPDES Permit Number WQ0013901001, Other Requirements Number 7.a, by failing to conduct annual soil monitoring for the irrigation site; 30 TAC §317.7(e), by failing to properly secure the gate to the effluent holding pond; 30 TAC §319.11(d) and TPDES Permit Number WQ0013901001, Operational Requirements Number 5, by failing to have a properly installed staff gauge; the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of municipal wastewater; and 30 TAC §305.42 and the Code, §26.121(a)(1), by failing to obtain authorization for the discharge of wastewater; PENALTY: $32,540; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(24) COMPANY: City of Saint Jo; DOCKET NUMBER: 2010-1384-MWD-E; IDENTIFIER: RN103016226; LOCATION: Montague County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014496001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with the permitted effluent limitations for $NH_3N$; PENALTY: $10,500; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 425-6010; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(25) COMPANY: TAYLOR PETROLEUM COMPANIES, INC. dba Taylor Petroleum Company #55; DOCKET NUMBER: 2010-1493-PST-E; IDENTIFIER: RN102366465; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to provide release detection for the USTs by failing to conduct reconciliation of inventory control records at least once a month; 30 TAC §334.49(b)(2) and the Code, §26.3475(d), by failing to maintain all components electrically isolated from the corrosive elements of the surrounding soil, backfill, groundwater, or any other water, and from other metallic components; 30 TAC §334.51(a)(6) and the Code, §26.3475(c)(2), by failing to ensure that all spill and overfill prevention devices are maintained in good operating condition; 30 TAC §334.7(d)(3), by failing to update the registration for any change or additional information regarding USTs; and 30 TAC §334.8(c)(5)(A)(ii), by failing to make available a valid, current TCEQ delivery certificate; PENALTY: $8,750; ENFORCEMENT COORDINATOR: Andrea Park, (512) 239-4575; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(26) COMPANY: The Lubrizol Corporation; DOCKET NUMBER: 2010-1468-AIR-E; IDENTIFIER: RN100221589; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O-01931, GTC, and THSC, §382.085(b), by failing to submit the semi-annual deviation report within the required time frame; PENALTY: $9,075; SEP amount of $3,630 applied to Barbers Hill Independent School District - Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(27) COMPANY: UMETIA, INC. dba Daves Express; DOCKET NUMBER: 2010-1688-PST-E; IDENTIFIER: RN101794535; LOCATION: Spring, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; and 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; PENALTY: $2,858; ENFORCEMENT COORDINATOR: Cara Windle, (512) 239-2581; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(28) COMPANY: United Structures of America, Inc.; DOCKET NUMBER: 2010-1529-MWD-E; IDENTIFIER: RN100219708; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (11)(B) and TPDES Permit Number WQ0012765001, Monitoring and Reporting Requirements Number 3.b, by failing to maintain, provide, or make records available for review; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0012765001, Sludge Provisions, by failing to timely submit a complete and accurate sludge report; 30 TAC §305.125(1) and (17) and §319.7(d) and TPDES Permit Number WQ0012765001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the DMRs; and 30 TAC §305.125(1), TPDES Permit Number WQ0012765001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with the permitted effluent limit for TSS; PENALTY: $3,158; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(29) COMPANY: VHI Construction, Inc.; DOCKET NUMBER: 2010-2011-WQ-E; IDENTIFIER: RN106020290; LOCATION: Parker County; TYPE OF FACILITY: construction company; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(30) COMPANY: Watco Tanks, Inc.; DOCKET NUMBER: 2010-1510-AIR-E; IDENTIFIER: RN102519584; LOCATION: Wilson County; TYPE OF FACILITY: UST manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), New Source Review Permit Number 32476, General Condition Number 8, and THSC, §382.085(b), by failing to operate emission point number 7B within the styrene maximum allowable emission rate of 11.25 lbs/hr; PENALTY: $3,175; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201100104
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 11, 2011

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## Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 21, 2011.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 21, 2011.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Aruba Petroleum, Inc.; DOCKET NUMBER: 2010-0365-AIR-E; TCEQ ID NUMBER: RN105845135; LOCATION: approximately one mile east of the intersection of Allison-Slidell Road (County Road (CR) 2513) and CR 2514, Wise County; TYPE OF FACILITY: natural gas drilling site; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code (THSC), §382.085(a) and (b), by failing to prevent the discharge from any source of one or more air contaminants or combinations thereof, in such concentration as to interfere with the normal use and enjoyment of animal life, vegetation, or property on January 17 and February 3, 2010; 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent the discharge from any source of one or more air contaminants or combinations thereof, in such concentration as to interfere with the normal use and enjoyment of animal life, vegetation, or property on January 20, 23, 24, 27, February 2, 7, 13, 18, and 20, 2010; 30 TAC §116.110(a) and THSC §382.0518 and §382.085(b), by failing to obtain authorization for a facility which may emit air contaminants; PENALTY: $35,500, Supplemental Environmental Project (SEP) offset amount $35,500 applied to University of Texas at Arlington Texas Air Monitoring Network ; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Dan Noyes; DOCKET NUMBER: 2009-1498-WOC-E; TCEQ ID NUMBER: RN105746911; LOCATION: 3737 Walnut Bend Lane, Houston, Harris County; TYPE OF FACILITY: Type V grease and grit trap municipal solid waste management facility; STATUTES AND RULES VIOLATED: TWC, §37.003 and 30 TAC §30.5, by failing to be licensed by the commission before engaging in the activity of supervising the operation or maintenance of a solid waste facility; PENALTY: $1,992; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2009-1944-AIR-E; TCEQ ID NUMBER: RN102579307; LOCATION: 2800 Decker Drive, Baytown, Harris County; TYPE OF FACILITY: refining and supply company; RULES VIOLATED: THSC, §382.085(b), 30 TAC §116.715(a), and Flexible Permit Number 18287, Special Condition (SC) Number 1, by failing to prevent unauthorized emissions that began on January 7, 2009, and lasted 34 hours; THSC, §382.085(b), 30 TAC §116.715(a), and Flexible Permit Number 18287, SC Number 1, by failing to prevent unauthorized emissions that began on May 4, 2009, and lasted for 32 hours and 24 minutes; and THSC, §382.085(b), 30 TAC §116.715(a) and §101.20(3), Flexible Permit Number 18287 and PSD-TX-730M4/PAL, SC Number 1, by failing to prevent unauthorized emissions that began on June 21, 2009, and lasted 33 hours and 16 minutes; PENALTY: $60,000; SEP offset amount of $30,000 applied to Barbers Hill Independent School District, Vehicle and Equipment Program; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2010-0027-AIR-E; TCEQ ID NUMBER: RN102574803; LOCATION: 5000 Bayway Drive, Baytown, Harris County; TYPE OF FACILITY: petrochemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(E)(iii) and §122.143(4), New Source Review Permit Number 8586, General Condition Number 7, Federal Operating Permit Number O-02270, Special Terms and Conditions Number 8, and THSC, §382.085(b), by failing to make records available at the request of commission personnel; PENALTY: $6,325; SEP offset amount of $3,162 applied to Barbers Hill Independent School District, Vehicle and Equipment Program; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201100116
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 11, 2011

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## Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 21, 2011.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 21, 2011.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Bret Lydel Rice dba A-1 Recycling Center; DOCKET NUMBER: 2010-1304-WQ-E; TCEQ ID NUMBER: RN105958334; LOCATION: 2743 Farm-to-Market (FM) Road 917, Mansfield, Johnson County; TYPE OF FACILITY: recycling facility; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge a storm water associated with industrial activities; PENALTY: $3,000; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: EPOWER INVESTMENTS, LLC; DOCKET NUMBER: 2009-1115-WQ-E; TCEQ ID NUMBER: RN105333728; LOCATION: 5500 Bewster Street, San Antonio, Bexar County; TYPE OF FACILITY: electronic scrap recycling facility; RULES VIOLATED: TWC, §26.121, 30 TAC §281.25(a)(4), and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with electronic scrap recycling activities; PENALTY: $1,100; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Jose Trevino dba Trevino Welding; DOCKET NUMBER: 2010-0950-AIR-E; TCEQ ID NUMBER: RN104402961; LOCATION: 2602 Guatemozin Street, Laredo, Webb County; TYPE OF FACILITY: welding shop with surface coating operations; RULES VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b), by failing to obtain proper authorization prior to conducting surface coating operations; and THSC, §382.016 and §382.085(b), by failing to maintain records on measuring and monitoring of emissions; PENALTY: $2,100; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(4) COMPANY: Juan Kozer dba Kozer & Associates, LLC; DOCKET NUMBER: 2010-0958-LII-E; TCEQ ID NUMBER: RN105934962; LOCATION: 108 Scarlet Oaks Cove, Dale, Caldwell County; TYPE OF FACILITY: landscaping business from his personal residence; RULES VIOLATED: 30 TAC §30.5(b) and TWC, §37.003, by failing to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required; PENALTY: $250; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(5) COMPANY: Rafael Mendoza III dba Kwik-E-Mart Convenience Store; DOCKET NUMBER: 2010-0934-PST-E; TCEQ ID NUMBER: RN101687614; LOCATION: the northern intersection of mile 9 and Kika de La Garza, mile 2 East (Old Rebel Heights, Block 2 Lot 40, Property Identification Number 250919), Mercedes, Hidalgo County; TYPE OF FACILITY: one underground storage tank (UST) and a convenience store; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the UST within 30 days of the occurrence of the change or addition; 30 TAC §334.54(c), (2), and (d), by failing to monitor for releases a UST system that has not been emptied of all regulated substances at the time it was temporarily removed from service and failed to ensure that any residue from stored regulated substances, which remained in the temporarily out-of-service UST system, did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and/or compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: $5,408; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(6) COMPANY: Robbie Mosley; DOCKET NUMBER: 2010-1168-PST-E; TCEQ ID NUMBER: RN101830685; LOCATION: northwest corner of the intersection of United States Highways 70 and 385, Springlake, Lamb County; TYPE OF FACILITY: two USTs and a former convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the date of the occurrence of the change or addition; and 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: $6,300; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7613.

(7) COMPANY: Ronald Triplette dba AAA Triplette Environmental Vacuum Truck; DOCKET NUMBER: 2010-0097-SLG-E; TCEQ ID NUMBER: RN105378673; LOCATION: 8006 Belbay Street, Houston, Harris County (business) and 1401 Booneville Road, Bryan, Brazos County (site); TYPE OF FACILITY: sludge transporting business (business) and disposed of waste behind a Valero convenience store (site); RULES VIOLATED: 30 TAC §312.142(a), by failing to renew an existing TCEQ Sludge Transporter Registration by August 31, 2008; 30 TAC §312.143 and TWC, §26.121(a)(1), by failing to deposit wastes at a facility designated by or acceptable to the generator where the owner or operator of the facility agrees to receive the waste and the Texas facility has written authorization by permit or registration issued by the executive director to receive wastes; PENALTY: $7,000; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500 and Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Shawn Horvath dba Aero Valley Water Service; DOCKET NUMBER: 2010-0619-PWS-E; TCEQ ID NUMBER: RN101198331; LOCATION: east of Interstate 35 West on Farm-to-Market Road 1171, one-half mile south on Cleveland Gibbs Road at Northwest Regional Airport, Denton County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.45(b)(1)(B)(iv) and THSC, §341.0315(c), by failing to provide a total storage capacity of at least 200 gallons per connection; 30 TAC §290.45(b)(1)(B)(ii) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of at least 20 gallons per connection; 30 TAC §290.43(e), by failing to provide an intruder-resistant fence to protect the facility's ground storage and pressure tanks; 30 TAC §290.46(d)(2)(A), by failing to maintain a residual disinfectant concentration of at least 0.2 milligrams per liter free chlorine throughout the distribution system at all times; 30 TAC §290.46(e)(4)(A) and THSC, §341.034(b), by failing to ensure that the facility is at all times operated under the direct supervision of a water works operator that holds a valid class "D" or higher license; 30 TAC §290.46(f)(2) and (3)(E)(i), by failing to keep on file and make available for review an up-to-date record of water works operations and maintenance activities for operator review and reference; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for the facility's well; 30 TAC §290.42(l), by failing to compile and maintain a thorough plant operations manual for operator review and reference; 30 TAC §290.44(d)(4), by failing to provide accurate metering devices at each residential, commercial or industrial service connection; 30 TAC §290.46(n)(3), by failing to maintain copies of the well completion data such as well material setting data, geological data, sealing information, disinfection information, microbiological sampling results and a chemical analysis report of a representative sample of water from the well on file at the facility and to make the data available to the executive director upon request; 30 TAC §290.46(t), by failing to post a legible sign at the water treatment facility that provides the name of the water supple and an emergency telephone number where a responsible official can be contacted; 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay all annual and late Public Health Service fees for TCEQ Financial Administration Account Number 90610243 for Fiscal Years 2003 - 2010 to the TCEQ in a timely manner; PENALTY: $4,676; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: The Family of God, of Abilene, Texas and Jose P. Jimenez; DOCKET NUMBER: 2009-1430-MLM-E; TCEQ ID NUMBER: RN105745343; LOCATION: Reeds Lake Road, Rogers, Bell County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; and 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the state's general prohibitions on unauthorized outdoor burning; PENALTY: $2,100; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-201100114
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 11, 2011

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## Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 21, 2011.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 21, 2011.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DO and/or the comment procedure at the listed phone numbers; however, comments on the S/DO shall be submitted to the commission in **writing.**

(1) COMPANY: Henry's All Seasons Markets, Inc.; DOCKET NUMBER: 2010-0765-PST-E; TCEQ ID NUMBER: RN103013041; LOCATION: 500 East Main Street, Harris County; TYPE OF FACILITY: three USTs and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form; 30 TAC §334.50(b)(1)(A), (d)(1)(B)(ii) and (iii)(I) and TWC, §26.3475(c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $10,021; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201100115
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 11, 2011

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## Notice of Water Quality Applications

The following notice was issued on December 31, 2010 through January 7, 2011.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

REID ROAD MUNICIPAL UTILITY DISTRICT NO 1 has applied for a renewal of TPDES Permit No. WQ0011563001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,750,000 gallons per day. The facility is located at 10015 Gusty Wind Road, approximately 3,600 feet south of the intersection of Windfern Road and Perry Road and approximately 1.1 miles east-southeast of the intersection of Farm-to-Market Road 1960 and Jones Road in Harris County, Texas 77064.

PETTY WATER SUPPLY AND SEWER SERVICE CORPORATION has applied for a renewal of TPDES Permit No. WQ0012305001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located approximately 0.4 mile southwest of the intersection of Farm-to-Market Road 137 and Farm-to-Market Road 1509 in Lamar County, Texas 75470.

FAYETTE WATER SUPPLY CORPORATION has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014985001, to authorize the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 25,000 gallons per day. The facility will be located at 3327 State Highway 159, approximately 10,500 feet northeast of the intersection of Business State Highway 71 and State Highway 159 in Fayette County, Texas 78945.

NATIONAL COIL COMPANY AND TERSCO PROPERTY MANAGEMENT LIMITED have applied for a renewal of TPDES Permit No. WQ0013830001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,000 gallons per day. The facility is located on Farm-to-Market Road 2011, approximately 2 miles south of Interstate Highway 20 in Gregg County, Texas 75603.

TEXAS A&M UNIVERSITY SYSTEM which operates Texas Agrilife Research Mariculture Laboratory, has applied for a major amendment to TPDES Permit No. WQ0004165000 to authorize an increase in the discharge of process wastewater from a daily average flow not to exceed 30,000 gallons per day to a daily average flow not to exceed 1,000,000 gallons per day and from a daily maximum flow not to exceed 75,000 gallons per day to a daily maximum flow not to exceed 2,000,000 gallons per day via Outfalls 001 and 002. The facility is located on the south side of the Corpus Christi Ship Channel, approximately 1,385 feet west of the ferry landing, and approximately 250 feet east of the municipal pier, on Port Street, in the City of Port Aransas, Nueces County, Texas 78373.

NICO JAAP DEBOER has applied for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004903000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate an existing dairy cattle facility at a maximum capacity of 999 head, of which 600 head are milking cows. The facility is located at 19008 Farm-to-Market Road 3079, Chandler, in Henderson County, Texas.

CITY OF QUITMAN has applied for a renewal of TPDES Permit No. WQ0010254001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The facility is located approximately 0.3 mile west-northwest of the intersection of State Highway 37 and State Highway 154 (City of Quitman) and 700 feet north of State Highway 154 in Wood County, Texas 75783.

CITY OF ROSENBERG has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010607002 to include sludge dewatering unit at the wastewater treatment facility. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,500,000 gallons per day. The facility is located at 3650 North Fairgrounds Road, 2,000 feet southwest of the intersection of U.S. Highway 59 and State Highway 36, south of the City of Rosenberg in Fort Bend County, Texas 77471.

THE TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of TPDES Permit No. WQ0011718001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The facility is located 500 feet due south of the intersection of U.S. Highway 190 and Park Road 48 in Jasper County, Texas 75951.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 149 has applied for a renewal of TPDES Permit No. WQ0011836001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 645,000 gallons per day. The facility is located at 16427 Sky Blue Lane, approximately 0.85 mile west and 0.15 mile north of the intersection of State Highway 6 and Spencer Road in Harris County, Texas 77095.

P C S DEVELOPMENT COMPANY has applied for a renewal of TPDES Permit No. WQ0011916001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed

90,000 gallons per day. The facility is located approximately 1,000 feet north of Interstate Highway 10 and 1.7 miles east of the intersection of the Interstate 10 and Farm-to-Market Road 1132 in Orange County, Texas 77662.

SABINE RIVER AUTHORITY OF TEXAS has applied for a renewal of TPDES Permit No. WQ0013857001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located approximately 3,500 feet south-southeast of Spring Point and approximately 4,000 feet northwest of Autumn Point near White Deer Reach on the southwest corner of Lake Tawakoni in Hunt County, Texas 75169.

CITY OF BOVINA has applied for a major amendment to TCEQ Permit No. WQ0014730001, to authorize a reduction in BOD5 monitoring frequency and to clarify that the number of ponds mentioned in Special Provision 15 of the existing permit should be 2. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day via surface irrigation of 63 acres of non-public access pastureland, which will remain the same. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 0.75 mile northeast of the intersection of State Highway 86 and East Street, to the south of State Highway 86 in Parmer County, Texas 79009.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201100126
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 12, 2011

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## Office of the Governor

### Request for Grant Applications for the Specialty Drug Court Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting competitive applications for projects that support eligible specialty court programs during the state fiscal year 2012 grant cycle.

Purpose: The purpose of the Specialty Court Program is to support drug courts as defined in Chapter 469 of the Texas Health and Safety Code, which incorporate the following ten essential characteristics:

(1) The integration of alcohol and other drug treatment services in the processing of cases in the judicial system;

(2) The use of a non-adversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants;

(3) Early identification and prompt placement of eligible participants in the program;

(4) Access to a continuum of alcohol, drug, and other related treatment and rehabilitative services;

(5) Monitoring of abstinence through weekly alcohol and other drug testing;

(6) A coordinated strategy to govern program responses to participants' compliance;

(7) Ongoing judicial interaction with program participants;

(8) Monitoring and evaluation of program goals and effectiveness;

(9) Continuing interdisciplinary education to promote effective program planning, implementation, and operations; and,

(10) Development of partnerships with public agencies and community organizations.

Available Funding: This solicitation may be funded from the following state and federal funding sources:

(1) Article 102.0178 of the Texas Code of Criminal Procedure establishes state funding for this purpose and designates CJD as the administering agency. Funds received under this article are deposited to the credit of the drug court account in the general revenue fund.

(2) State funds are authorized under §102.056 of the Texas Code of Criminal Procedure and, §772.006 of the Texas Government Code designates CJD as the administering agency. The source of funding is a biennial appropriation by the Texas Legislature from funds collected through court costs and fees. All awards are subject to the availability of funds appropriated by the Texas Legislature for the 2012-2013 biennium.

(3) Federal funds are authorized under the Edward Byrne Memorial Justice Assistance Grant (JAG) Program (42 U.S.C. 3751(a)). JAG funds are made available through a Congressional appropriation to the United States Department of Justice. Congress has not finalized federal appropriations for federal fiscal year 2011 and all awards are subject to the availability of appropriated federal funds and any modifications or additional requirements that may be imposed by law.

Standards: Grantees must comply with the standards cited in the *Texas Administrative Code* (1 TAC Chapter 3), and all statutes, requirements, and guidelines applicable to state and federal funding sources.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

(1) proselytizing or sectarian worship;

(2) lobbying;

(3) vehicles or equipment for government agencies that are for general agency use;

(4) weapons, ammunition, explosives or military vehicles;

(5) admission fees or tickets to any amusement park, recreational activity or sporting event;

(6) promotional gifts;

(7) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement and/or social activities in any way;

(8) membership dues for individuals;

(9) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (e.g., supplanting);

(10) fundraising;

(11) construction, remodeling or renovation;

(12) medical services; and

(13) transportation, lodging, per diem or any related costs for participants when grant funds are used to develop and conduct training.

Eligible Applicants: Counties

Requirements:

(1) The court must be registered with CJD as required in the Texas Health and Safety Code, §469.003, and must maintain a current registration throughout the grant period.

(2) The court must also be registered with the Texas Department of State Health Services, Clinical Management for Behavioral Health Services database. Information about registration procedures may be accessed at http://www.dshs.state.tx.us/cmbhs/default.shtm.

(3) The presiding judge of a drug court funded under this RFA must be an active judge holding elective office, master or magistrate.

(4) Pursuant to Texas Health and Safety Code, §469.006, counties with populations of more than 200,000 are required to establish a drug court.

(5) Any portion of fees collected from program participants and retained by the grantee are considered generated program income and must be applied to the grant through a grant adjustment.

(6) Applicants must have a DUNS (Data Universal Numbering System) number assigned to its agency, to request a DUNS number, go to http://fedgov.dnb.com/webform/displayHomePage.do;

(7) Applicants funded under the JAG program must be registered in the federal Central Contractor Registration (CCR) database located at http://www.ccr.gov and maintain an active registration throughout the grant period; and

(8) Applicants funded under the JAG program must ensure that their law enforcement agency is current on reporting Part 1 violent crime data to the Texas Department of Public Safety for inclusion in the annual Uniform Crime Report (UCR) and that the agency has been current for the three previous years.

Project Period: Grant-funded projects must begin on or after September 1, 2011, and expire on or before August 31, 2012.

Application Process: Applicants can access CJD's eGrants website at https://eGrants.governor.state.tx.us to register and apply for funding.

Preferences: Preference will be given to mandated drug courts under Texas Health and Safety Code, §469.006.

Closing Date for Receipt of Applications: All applications must be submitted via CJD's eGrants website on or before March 31, 2011.

Selection Process: Applications will be competitive and reviewed by CJD staff members or a group selected by the executive director of CJD. CJD will make all final funding decisions based on eligibility, reasonableness of the project, availability of funding, and cost-effectiveness.

Contact Information: If additional information is needed, contact the eGrants Help Desk at eGrants@governor.state.tx.us or (512) 463-1919.

TRD-201100118
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: January 12, 2011

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## Texas Health and Human Services Commission

### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 15, 2011, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Clinical Laboratory Services. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and the 1 Texas Administrative Code (TAC) §355.201(e) - (f), which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed payment rates for Clinical Laboratory Services are proposed to be effective April 1, 2011.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC §355.8610, which addresses the reimbursement methodology for clinical laboratory services.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after February 1, 2011. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201100101
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: January 10, 2011

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### Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective February 1, 2011.

The amendment will modify the reimbursement methodology in the State Plan for Hospice Care to indicate that the Department of Aging and Disability Services (DADS) pays a Medicaid hospice room and board per diem amount that is 96.96 percent of the appropriate rate for each Medicaid hospice recipient residing in a nursing facility or intermediate care facility for persons with mental retardation. The current language addresses payments only for recipients residing in nursing facilities and states that the per diem amount is equal to 95 percent of the appropriate rate. This change is being made to: 1) add a reimbursement methodology for Hospice Care for recipients that reside in an intermediate care facility for persons with mental retardation; and 2) enable DADS to maintain its current payment rates for hospice recipients residing in nursing facilities and intermediate facilities for persons with mental retardation by increasing the percentage to 96.96 percent when nursing facility and intermediate care facility for persons with mental retardation payment rates are reduced effective February 1, 2011.

The proposed amendment is not expected to have a fiscal impact because it will act to maintain the current payment rates for hospice recipients residing in nursing facilities and intermediate care facilities for persons with mental retardation.

Interested parties may obtain copies of the proposed amendment by contacting Pam McDonald, Director of Rate Analysis for Long Term Services and Supports, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1373; by facsimile at (512) 491-1998; or by e-mail at pam.mcdonald@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of DADS.

TRD-201100102
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: January 10, 2011

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## Department of State Health Services

### Certification of Nonprofit Hospitals or Hospital Systems for Limited Liability

The Hospital Survey Program in the Center for Health Statistics, Department of State Health Services (department), has completed its analysis of hospital data for the purpose of certifying nonprofit hospitals or hospital systems for limited liability in accordance with the Health and Safety Code, §311.0456. We received requests for certification from 11 hospitals. We will notify each hospital by mail that is certified in accordance with Health and Safety Code, §311.0456. Therefore, if you have any comments or questions about the following certification results, please contact Mr. Dwayne Collins or Ms. JaNell Jenkins of the department's Center for Health Statistics.

**Certified. 1 non-profit hospital system (6 hospitals) and 3 non-profit hospitals** were determined to be eligible for certification based on information that they provided; i.e., charity care in an amount equal to or greater than 8 percent of their net patient revenue and that they provided 40 percent or more of the charity care in their counties. The certification issued under Health and Safety Code, §311.0456, to a non-profit hospital or hospital system takes effect on December 31, 2010, and expires on the anniversary of that date.

**Seton Healthcare System - Travis County only (6 hospitals)**

1. Dell Children's Medical Center in Travis County;

2. Seton Medical Center Austin in Travis County;

3. Seton Northwest Hospital in Travis County;

4. Seton Shoal Creek Hospital in Travis County;

5. Seton Southwest Hospital in Travis County;

6. University Medical Center at Brackenridge Hospital in Travis County;

7. Seton Edgar B. Davis in Caldwell County;

8. Shannon West Texas Memorial Hospital in Tom Green County;

9. Seton Medical Center Williamson in Williamson County.

**Not Certified. 2 non-profit hospitals** were not certified because, based on their survey data, they did not provide charity care in an amount equal to or greater than 8 percent of their net patient revenue nor did they provide 40 percent of the charity care in their counties:

1. Seton Highland Lakes in Burnet County;

2. Seton Medical Center Hays in Hays County.

For further information about this report, please contact Mr. Dwayne Collins or Ms. JaNell Jenkins in the Center for Health Statistics, Department of State Health Services, 1100 West 49th Street, Austin, Texas, telephone (512) 458-7261.

TRD-201100043
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: January 7, 2011

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### Schedules of Controlled Substances

PURSUANT TO THE TEXAS CONTROLLED SUBSTANCES ACT, HEALTH AND SAFETY CODE, CHAPTER 481, THESE SCHEDULES SUPERCEDE PREVIOUS SCHEDULES AND CONTAIN THE MOST CURRENT VERSION OF THE SCHEDULES OF ALL CONTROLLED SUBSTANCES FROM THE PREVIOUS SCHEDULES AND MODIFICATIONS.

This annual publication of the Texas Schedules of Controlled Substances was signed by David L. Lakey, Commissioner of the Department of State Health Services, and will take effect 21 days following publication of this notice in the *Texas Register.*

Changes to the schedules are designated by an asterisk (*). Additional information can be obtained by contacting the Department of State Health Services, Drugs and Medical Devices Group, P.O. Box 149347, Austin, Texas 78714-9347. The telephone number is (512) 834-6755 and the website address is http://www.dshs.state.tx.us/dmd.

**SCHEDULES**

Nomenclature: Controlled substances listed in these schedules are included by whatever official, common, usual, chemical, or trade name they may be designated.

**SCHEDULE I**

Schedule I consists of:

Schedule I opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

(2) Allylprodine;

(3) Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);

(4) Alpha-methylfentanyl or any other derivative of Fentanyl;

(5) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl-4-piperidinyl]-N-phenyl-propanamide);

(6) Benzethidine;

(7) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenyl-propanamide);

(8) Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);

(9) Betaprodine;

(10) Clonitazene;

(11) Diampromide;

(12) Diethylthiambutene;

(13) Difenoxin;

(14) Dimenoxadol;

(15) Dimethylthiambutene;

(16) Dioxaphetyl butyrate;

(17) Dipipanone;

(18) Ethylmethylthiambutene;

(19) Etonitazene;

(20) Etoxeridine;

(21) Furethidine;

(22) Hydroxypethidine;

(23) Ketobemidone;

(24) Levophenacylmorphan;

(25) Meprodine;

(26) Methadol;

(27) 3-methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide), its optical and geometric isomers;

(28) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

(29) Moramide;

(30) Morpheridine;

(31) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

(32) Noracymethadol;

(33) Norlevorphanol;

(34) Normethadone;

(35) Norpipanone;

(36) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]-propanamide);

(37) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(38) Phenadoxone;

(39) Phenampromide;

(40) Phencyclidine;

(41) Phenomorphan;

(42) Phenoperidine;

(43) Piritramide;

(44) Proheptazine;

(45) Properidine;

(46) Propiram;

(47) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);

(48) Tilidine; and

(49) Trimeperidine.

Schedule I opium derivatives

The following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

(5) Codeine-N-Oxide;

(6) Cyprenorphine;

(7) Desomorphine;

(8) Dihydromorphine;

(9) Drotebanol;

(10) Etorphine (except hydrochloride salt);

(11) Heroin;

(12) Hydromorphinol;

(13) Methyldesorphine;

(14) Methyldihydromorphine;

(15) Monoacetylmorphine;

(16) Morphine methylbromide;

(17) Morphine methylsulfonate;

(18) Morphine-N-Oxide;

(19) Myrophine;

(20) Nicocodeine;

(21) Nicomorphine;

(22) Normorphine;

(23) Pholcodine; and

(24) Thebacon.

Schedule I hallucinogenic substances

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this Schedule I hallucinogenic substances section only, the term "isomer" includes optical, position, and geometric isomers):

(1) Alpha-ethyltryptamine (some trade or other names: etryptamine; Monase; alpha ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; AET);

(2) alpha-methyltryptamine (AMT), its isomers, salts, and salts of isomers;

(3) 4-bromo-2,5-dimethoxyamphetamine (some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA);

(4) 4-bromo-2,5-dimethoxyphenethylamine (some trade or other names: Nexus; 2C-B; 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB);

(5) 2,5-dimethoxyamphetamine (some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA);

(6) 2,5-dimethoxy-4-ethylamphetamine (some trade or other names: DOET);

(7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts and salts of isomers;

(8) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts, and salts of isomers;

(9) 5-methoxy-3,4-methylenedioxy-amphetamine;

(10) 4-methoxyamphetamine (some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

(11) 1-methyl-4-phenyl-1,2,5,6-tetrahydro-pyridine (MPTP);

(12) 4-methyl-2,5-dimethoxyamphetamine (some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methyl-phenethylamine; "DOM"; and "STP");

(13) 3,4-methylenedioxy-amphetamine;

(14) 3,4-methylenedioxy-methamphetamine (MDMA, MDM);

(15) 3,4-methylenedioxy-N-ethylamphetamine (some trade or other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine; N-ethyl MDA; MDE; MDEA);

(16) 3,4,5-trimethoxy amphetamine;

(17) N-hydroxy-3,4-methylenedioxyamphetamine (Also known as N-hydroxy MDA);

(18) Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine);

(19) Diethyltryptamine (some trade and other names: N,N-Diethyltryptamine; DET);

(20) Dimethyltryptamine (some trade and other names: DMT);

(21) Ethylamine Analog of Phencyclidine (some trade or other names: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl)-ethylamine; cyclohexamine; PCE);

(22) Ibogaine (some trade or other names: 7-Ethyl-6,6-beta, 7,8,9,10,12,13-octhydro-2-methoxy-6,9-methano-5H-pyrido[1',2':1,2] azepino [5,4-b] indole; taber-nanthe iboga);

(23) Lysergic acid diethylamide;

(24) Marihuana;

(25) Mescaline;

(26) N-benzylpiperazine (some other names: BZP; 1-benzylpiperazine), its optical isomers, salts and salts of isomers;

(27) N-ethyl-3-piperidyl benzilate;

(28) N-methyl-3-piperidyl benzilate;

(29) Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl);

(30) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora,* whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(31) Psilocybin;

(32) Psilocin;

(33) Pyrrolidine analog of phencyclidine (some trade or other names: 1-(1-phenyl-cyclohexyl)-pyrrolidine, PCPy, PHP);

(34) Tetrahydrocannabinols;

meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

1 cis or trans tetrahydrocannabinol, and their optical isomers;

6 cis or trans tetrahydrocannabinol, and their optical isomers; and

3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.);

(35) Thiophene analog of phencyclidine (some trade or other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-thienyl analog of phencyclidine; TPCP); and

(36) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (some trade or other names: TCPy).

Schedule I stimulants

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Aminorex (some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5-phenyl-2-oxazolamine);

(2) Cathinone (some trade or other names: 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone and norephedrone);

(3) Fenethylline;

(4) Methcathinone (some other names: 2-(methylamino)-propiophenone; alpha-(methylamino) propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR1432);

(5) 4-methylaminorex;

(6) N-ethylamphetamine; and

(7) N,N-dimethylamphetamine (some other names: N,N-alpha-trimethylbenzene-ethaneamine; N,N-alpha-trimethylphenethylamine).

Schedule I depressants

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of

isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma-hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(2) Mecloqualone; and

(3) Methaqualone.

**SCHEDULE II**

Schedule II consists of:

Schedule II substances, vegetable origin or chemical synthesis

The following substances, however produced, except those narcotic drugs listed in other schedules:

(1) Opium and opiate, and a salt, compound, derivative, or preparation of opium or opiate, other than thebaine-derived butorphanol, naloxone and its salts, naltrexone and its salts, and nalmefene and its salts, but including:

(1-1) Codeine;

(1-2) Dihydroetorphine;

(1-3) Ethylmorphine;

(1-4) Etorphine hydrochloride;

(1-5) Granulated opium;

(1-6) Hydrocodone;

(1-7) Hydromorphone;

(1-8) Metopon;

(1-9) Morphine;

(1-10) Opium extracts;

(1-11) Opium fluid extracts;

(1-12) Oripavine;

(1-13) Oxycodone;

(1-14) Oxymorphone;

(1-15) Powdered opium;

(1-16) Raw opium;

(1-17) Thebaine; and

(1-18) Tincture of opium.

(2) A salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by Paragraph (1) of Schedule II substances, vegetable origin or chemical synthesis, other than the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Cocaine, including:

(4-1) its salts, its optical, position, and geometric isomers, and the salts of those isomers; and

(4-2) coca leaves and a salt, compound, derivative, or preparation of coca leaves that is chemically equivalent or identical to a substance described by this paragraph, other than decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine; and

(5) Concentrate of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

Opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alfentanil;

(2) Alphaprodine;

(3) Anileridine;

(4) Bezitramide;

(5) Carfentanil;

(6) Dextropropoxyphene, bulk (nondosage form);

(7) Dihydrocodeine;

(8) Diphenoxylate;

(9) Fentanyl;

(10) Isomethadone;

(11) Levo-alphacetylmethadol (some trade or other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM);

(12) Levomethorphan;

(13) Levorphanol;

(14) Metazocine;

(15) Methadone;

(16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;

(17) Moramide-Intermediate, 2-methyl-3-morpholino-1,1-diphenyl-propane-carboxylic acid;

(18) Pethidine (meperidine);

(19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(22) Phenazocine;

(23) Piminodine;

(24) Racemethorphan;

(25) Racemorphan;

(26) Remifentanil;

(27) Sufentanil; and

(28) Tapentadol

Schedule II stimulants

Unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, §481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Methamphetamine, including its salts, optical isomers, and salts of optical isomers;

(3) Methylphenidate and its salts; and

(4) Phenmetrazine and its salts.

(5) Lisdexamfetamine, including its salts, isomers, and salts of its isomers.

Schedule II depressants

Unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;

(2) Glutethimide;

(3) Pentobarbital; and

(4) Secobarbital.

Schedule II hallucinogenic substances

(1) Nabilone (Another name for nabilone: (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8, 10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one).

Schedule II precursors

Unless specifically excepted or listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances:

(1) Immediate precursor to methamphetamine:

(1-1) Phenylacetone and methylamine if possessed together with intent to manufacture methamphetamine;

(2) Immediate precursor to amphetamine and methamphetamine:

(2-1) Phenylacetone (some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone); and

(3) Immediate precursors to phencyclidine (PCP):

(3-1) 1-phenylcyclohexylamine; and

(3-2) 1-piperidinocyclohexanecarbonitrile (PCC).

(4)* Immediate precursor to fentanyl:

(4-1) 4-anilino-N-phenethyl-4-piperidine (ANPP).

**SCHEDULE III**

Schedule III consists of:

Schedule III depressants

Unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, §481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) a compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any of their salts and one or more active medicinal ingredients that are not listed in a schedule;

(2) a suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any of their salts and approved by the Food and Drug Administration for marketing only as a suppository;

(3) a substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances that are specifically listed in other schedules;

(4) Chlorhexadol;

(5) Any drug product containing gamma hydroxybutyric acid, including its salts, isoners, and salts of isomers, for which an application is approved under §505 of the Federal Food Drug and Cosmetic Act;

(6) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;

(7) Lysergic acid;

(8) Lysergic acid amide;

(9) Methyprylon;

(10) Sulfondiethylmethane;

(11) Sulfonethylmethane;

(12) Sulfonmethane; and

(13) Tiletamine and zolazepam or any salt thereof. Some trade or other names for a tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethyl-pyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyrazapon.

Nalorphine

Schedule III narcotics

Unless specifically excepted or unless listed in another schedule:

(1) a material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any of their salts:

(1-1) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(1-2) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-3) not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(1-4) not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-5) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-6) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(1-7) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(1-8) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(2) any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts:

(2-1) Buprenorphine.

Schedule III stimulants

Unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of the substance's isomers, if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Benzphetamine;

(2) Chlorphentermine;

(3) Clortermine; and

(4) Phendimetrazine.

Schedule III anabolic steroids and hormones

Anabolic steroids, including any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone), and include the following:

(1) androstanediol--

(1-1) 3 beta,17 beta-dihydroxy-5 alpha-androstane;

(1-2) 3 alpha,17 beta-dihydroxy-5 alpha-androstane;

(2) androstanedione (5 alpha-androstan-3,17-dione);

(3) androstenediol--

(3-1) 1-androstenediol (3 beta,17 beta-dihydroxy-5 alpha-androst-1-ene);

(3-2) 1-androstenediol (3 alpha,17 beta-dihydroxy-5 alpha-androst-1-ene);

(3-3) 4-androstenediol (3 beta,17 beta-dihydroxy-androst-4-ene);

(3-4) 5-androstenediol (3 beta,17 beta-dihydroxy-androst-5-ene);

(4) androstenedione--

(4-1) 1-androstenedione ([5 alpha]-androst-1-en-3,17-dione);

(4-2) 4-androstenedione (androst-4-en-3,17-dione);

(4-3) 5-androstenedione (androst-5-en-3,17-dione);

(5) bolasterone (7 alpha,17 alpha-dimethyl-17 beta-hydroxyandrost-4-en-3-one);

(6) boldenone (17 beta-hydroxyandrost-1,4,-diene-3-one);

*(7) boldione (androsta-1,4-diene-3,17-dione);

(8) calusterone (7 beta,17 alpha-dimethyl-17 beta-hydroxyandrost-4-en-3-one);

(9) clostebol (4-chloro-17 beta-hydroxyandrost-4-en-3-one);

(10) dehydrochloromethyltestosterone (4-chloro-17 beta-hydroxy-17alpha-methyl-androst-1,4-dien-3-one);

(11) delta-1-dihydrotestosterone (a.k.a. '1-testosterone') (17 beta-hydroxy-5 alpha-androst-1-en-3-one);

*(12) desoxymethyltestosterone (17[alpha]-methyl-5[alpha]-androst-2-en-17[beta]-ol; madol);

(13) 4-dihydrotestosterone (17 beta-hydroxy-androstan-3-one);

(14) drostanolone (17 beta-hydroxy-2 alpha-methyl-5 alpha-androstan-3-one);

(15) ethylestrenol (17 alpha-ethyl-17 beta-hydroxyestr-4-ene);

(16) fluoxymesterone (9-fluoro-17 alpha-methyl-11 beta,17 beta-dihydroxyandrost-4-en-3-one);

(17) formebolone (2-formyl-17 alpha-methyl-11 alpha,17 beta-dihydroxyandrost-1,4-dien-3-one);

(18) furazabol (17 alpha-methyl-17 beta-hydroxyandrostano[2,3-c]-furazan);

(19) 13 beta-ethyl-17 beta-hydroxygon-4-en-3-one;

(20) 4-hydroxytestosterone (4,17 beta-dihydroxy-androst-4-en-3-one);

(21) 4-hydroxy-19-nortestosterone (4,17 beta-dihydroxy-estr-4-en-3-one);

(22) mestanolone (17 alpha-methyl-17 beta-hydroxy-5 alpha-androstan-3-one);

(23) mesterolone (1 alpha-methyl-17 beta-hydroxy-[5 alpha]-androstan-3-one);

(24) methandienone (17 alpha-methyl-17 beta-hydroxyandrost-1,4-dien-3-one);

(25) methandriol (17 alpha-methyl-3 beta,17 beta-dihydroxyandrost-5-ene);

(26) methenolone (1-methyl-17 beta-hydroxy-5 alpha-androst-1-en-3-one);

(27) 17 alpha-methyl-3 beta, 17 beta-dihydroxy-5 alpha-androstane;

(28) 17alpha-methyl-3 alpha,17 beta-dihydroxy-5 alpha-androstane;

(29) 17 alpha-methyl-3 beta,17 beta-dihydroxyandrost-4-ene;

(30) 17 alpha-methyl-4-hydroxynandrolone (17 alpha-methyl-4-hydroxy-17 beta-hydroxyestr-4-en-3-one);

(31) methyldienolone (17 alpha-methyl-17 beta-hydroxyestra-4,9(10)-dien-3-one);

(32) methyltrienolone (17 alpha-methyl-17 beta-hydroxyestra-4,9-11-trien-3-one);

(33) methyltestosterone (17 alpha-methyl-17 beta-hydroxyandrost-4-en-3-one);

(34) mibolerone (7 alpha,17 alpha-dimethyl-17 beta-hydroxyestr-4-en-3-one);

(35) 17 alpha-methyl-delta-1-dihydrotestosterone (17 beta-hydroxy-17 alpha-methyl-5 alpha-androst-1-en-3-one) (a.k.a. '17-alpha-methyl-1-testosterone');

(36) nandrolone (17 beta-hydroxyestr-4-en-3-one);

(37) norandrostenediol--

(37-1) 19-nor-4-androstenediol (3 beta, 17 beta-dihydroxyestr-4-ene);

(37-2) 19-nor-4-androstenediol (3 alpha, 17 beta-dihydroxyestr-4-ene);

(37-3) 19-nor-5-androstenediol (3 beta, 17 beta-dihydroxyestr-5-ene);

(37-4) 19-nor-5-androstenediol (3 alpha, 17 beta-dihydroxyestr-5-ene);

(38) norandrostenedione--

(38-1) 19-nor-4-androstenedione (estr-4-en-3,17-dione);

(38-2) 19-nor-5-androstenedione (estr-5-en-3,17-dione;

*(39) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);

(40) norbolethone (13 beta,17alpha-diethyl-17 beta-hydroxygon-4-en-3-one);

(41) norclostebol (4-chloro-17 beta-hydroxyestr-4-en-3-one);

(42) norethandrolone (17 alpha-ethyl-17 beta-hydroxyestr-4-en-3-one);

(43) normethandrolone (17 alpha-methyl-17 beta-hydroxyestr-4-en-3-one);

(44) oxandrolone (17 alpha-methyl-17 beta-hydroxy-2-oxa-[5 alpha]-androstan-3-one);

(45) oxymesterone (17 alpha-methyl-4,17 beta-dihydroxyandrost-4-en-3-one);

(46) oxymetholone (17 alpha-methyl-2-hydroxymethylene-17 beta-hydroxy-[5 alpha]-androstan-3-one);

(47) stanozolol (17 alpha-methyl-17 beta-hydroxy-[5 alpha]-androst-2-eno[3,2-c]-pyrazole);

(48) stenbolone (17 beta-hydroxy-2-methyl-[5 alpha]-androst-1-en-3-one);

(49) testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);

(50) testosterone (17 beta-hydroxyandrost-4-en-3-one);

(51) tetrahydrogestrinone (13 beta,17 alpha-diethyl-17 beta-hydroxygon-4,9,11-trien-3-one);

(52) trenbolone (17 beta-hydroxyestr-4,9,11-trien-3-one); and

(53) any salt, ester, or ether of a drug or substance described in this paragraph.

Schedule III hallucinogenic substances

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in U.S. Food and Drug Administration approved drug product. (Some other names for dronabinol:(6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-tri-methyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol).

**SCHEDULE IV**

Schedule IV consists of:

Schedule IV depressants

Except as provided by the Texas Controlled Substances Act, Health and Safety Code, §481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Alprazolam;

(2) Barbital;

(3) Bromazepam;

(4) Camazepam;

(5) Chloral betaine;

(6) Chloral hydrate;

(7) Chlordiazepoxide;

(8) Clobazam;

(9) Clonazepam;

(10) Clorazepate;

(11) Clotiazepam;

(12) Cloxazolam;

(13) Delorazepam;

(14) Diazepam;

(15) Dichloralphenazone;

(16) Estazolam;

(17) Ethchlorvynol;

(18) Ethinamate;

(19) Ethyl loflazepate;

(20) Fludiazepam;

(21) Flunitrazepam;

(22) Flurazepam;

(23) Halazepam;

(24) Haloxazolam;

(25) Ketazolam;

(26) Loprazolam;

(27) Lorazepam;

(28) Lormetazepam;

(29) Mebutamate;

(30) Medazepam;

(31) Meprobamate;

(32) Methohexital;

(33) Methylphenobarbital (mephobarbital);

(34) Midazolam;

(35) Nimetazepam;

(36) Nitrazepam;

(37) Nordiazepam;

(38) Oxazepam;

(39) Oxazolam;

(40) Paraldehyde;

(41) Petrichloral;

(42) Phenobarbital;

(43) Pinazepam;

(44) Prazepam;

(45) Quazepam;

(46) Temazepam;

(47) Tetrazepam;

(48) Triazolam;

(49) Zaleplon;

(50) Zolpidem; and

(51) Zopiclone, its salts, isomers, and salts of isomers.

Schedule IV stimulants

Unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of those isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Cathine [(+)-norpseudoephedrine];

(2) Diethylpropion;

(3) Fencamfamin;

(4) Fenfluramine;

(5) Fenproporex;

(6) Mazindol;

(7) Mefenorex;

(8) Modafinil;

(9) Pemoline (including organometallic complexes and their chelates);

(10) Phentermine;

(11) Pipradrol;

(12) SPA [(-)-1-dimethylamino-1,2-diphenylethane]; and

(13) Sibutramine.

Schedule IV narcotics

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs or their salts:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and

(2) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

Schedule IV other substances

Unless specifically excepted or unless listed in another schedule, a material, compound, substance's salts:

(1) Butorphanol, including its optical isomers;

(2) Pentazocine, its salts, derivatives, compounds, or mixtures; and

(3) Carisoprodol.

**SCHEDULE V**

Schedule V consists of:

Schedule V narcotics containing non-narcotic active medicinal ingredients

A compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that also contain one or more non-narcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100grams;

(2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and

(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

Schedule V stimulants

Unless specifically exempted or excluded or unless listed in another schedule, a compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Pyrovalerone.

Schedule V depressants

Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-proprionamide]; and

(2) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

TRD-201100041
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: January 7, 2011

♦ ♦ ♦

## Texas Department of Insurance

### Company Licensing

Application to change the name of AXA RE PROPERTY AND CASUALTY INSURANCE COMPANY to MOSAIC INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Wilmington, Delaware.

Application for admission to the State of Texas by CATLIN INDEMNITY COMPANY, a foreign fire and/or casualty company. The home office is in Dover, Delaware.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-201100128
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: January 12, 2011

♦ ♦ ♦

### Proposed Fiscal Year 2011 Research Agenda for the Texas Department of Insurance Workers' Compensation Research and Evaluation Group

Labor Code §405.0026 requires the Commissioner of Insurance to adopt an annual research agenda for the Workers' Compensation

Research and Evaluation Group (REG) at the Texas Department of Insurance (Department). Labor Code §405.0026 also requires the Department to publish a proposed research agenda in the *Texas Register* for public review and comment and the Commissioner of Insurance to hold a public hearing on the proposed research agenda if requested by a member of the public.

In November 2010, the REG posted a public request to stakeholders and the general public for research agenda suggestions on the Department's website. The REG also made inquiries and requests of legislative offices for input in developing the FY 2011 Research Agenda. After reviewing the responses received, the REG developed a proposed FY 2011 Research Agenda using the following criteria:

Is the proposed research project required by statute or likely to be part of an upcoming legislative review?

Will the results of the proposed research project address the information needs of multiple stakeholder groups and/or legislative committees?

Are there available data to complete the project or can data be obtained easily and economically to complete the project?

Does the REG have sufficient resources to complete the project within FY 2011?

Based upon the responses received and the criteria outlined above, the REG proposes the following set of projects for the FY 2011 Research Agenda for public review and comment.

1. Completion and publication of the fifth edition of the Workers' Compensation Health Care Network Report Card (required under Insurance Code §1305.502 and Labor Code §405.0025).

2. Continuing examination of the frequency of employers participating in certified health care delivery networks and the number of workers' compensation claims in those networks.

3. An annual update of return-to-work outcomes for injured workers using data from the Texas Workforce Commission, including an examination of the characteristics associated with injured workers and employers who could benefit most from return-to-work outreach and coordination efforts.

4. A study of the trends in the Texas employers' costs to participate in the workers' compensation system, including a cost-benefit analysis for the employers' decision to participate in the workers' compensation system and an evaluation of the cost efficiencies in the benefit delivery and underwriting processes.

5. An analysis of pharmaceutical trends in the Texas workers' compensation system, including prescription patterns, utilization and cost, durations, and post-injury outcomes.

In addition to the above, the REG anticipates conducting additional projects as requested in support of the 82nd Legislature, Regular Session, 2011.

REQUEST FOR PUBLIC COMMENT OR PUBLIC HEARING. To be considered, written comments on the proposed FY 2011 Research Agenda must be submitted no later than 5:00 p.m. on February 18, 2011 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to DC Campbell, Director, Workers' Compensation Research and Evaluation Group, Mail Code 105-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered. The proposed research agenda can be found on the Department's website at www.tdi.state.tx.us. For questions regarding the proposed agenda please contact DC Campbell at wcresearch@tdi.state.tx.us.

TRD-201100081
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: January 10, 2011



### Third Party Administrator Application

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application of TCS E-SERVE INTERNATIONAL LIMITED, an alien third party administrator. The home office is GURGAON, INDIA.

Any objections must be filed within 20 days after this notice is published in the *Texas Register,* addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-201100129
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: January 12, 2011



## Texas Department of Insurance, Division of Workers' Compensation

### Correction of Error

The Texas Department of Insurance, Division of Workers' Compensation adopted amendments to 28 TAC §§180.1 - 180.3, 180.8, 180.22, 180.24, 180.25, 180.27 and 180.28 in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11873). Several errors occur in the agency rule adoption notice and are corrected as follows.

*Page 11874,* left column, last paragraph, thirteenth line

The word "decision" should be "decisions". The corrected phrase should read: "...the quality and timeliness of decisions made...."

*Page 11874,* right column, first paragraph, second line

The word "the" should precede "Commissioner". The sentence should begin: "Labor Code §413.041 requires the Commissioner to define...."

*Page 11875,* left column, fifth paragraph, seventh line

A section symbol (§) should precede the number 408.0043(b). The sentence should begin: "Labor Code §408.0043(b) requires that a doctor...."

*Page 11875,* right column, sixth paragraph, fourth line

The sentence begins "In response the Division revised the definition for peer review in §180.1(a)(19) of this title to mean...." The corrected sentence should read as follows:

"In response the Division adopted the revised definition for peer review in §180.1(19) of this title to mean...."

*Page 11876,* left column, fifth paragraph

In the fourth and eighth lines, the word "employees" should be "employee". In the seventh line, the phrase "the injured" should be "an

injured". In the ninth line, the phrase "as and when appropriate" is changed to "when appropriate". The paragraph should read as follows:

"...on injured employee to determine a date of maximum medical improvement and to assign impairment ratings. In response, the Division has clarified adopted §180.22(c) to include that a duty and responsibility of the treating doctor is to examine an injured employee to determine a date of maximum medical improvement and assign impairment ratings when appropriate."

*Page 11877,* right column, fourth paragraph

The paragraph begins with "Agency Response: Section 180.19 of this title is not a rule amended by this proposal...."

The sentence should read as follows:

"Agency Response: Section 180.19 of this title was not a rule proposed to be amended and is beyond the scope of these rules."

*Page 11878,* left column, seventh paragraph

The paragraph begins with "Agency Response: The Division disagrees with this comment and declines to define pattern of practice." A sentence was omitted from the publication. The complete paragraph should read as follows:

"Agency Response: The Division disagrees with this comment and declines to define pattern of practice. Because HB 7 removed the mental state requirements that the Division was required to demonstrate in order to establish administrative violations under Chapter 415 of the Labor Code, the Division no longer needs a definition of "pattern of practice." Furthermore, Labor Code §415.021 provides that in addition to any other sanction, administrative penalty (fine), or other remedy authorized by Labor Code, Title 5, the Division may assess an administrative penalty against a person who commits an administrative violation. The Division also notes that the reference to "pattern of practice" referred to by the commenter has been deleted from adopted rule §180.26 and replaced with a statutory reference to Labor Code §408.0231(c), the statute upon which the proposed language was based. Labor Code §408.0231 does not, however, require the Division to find a "pattern of practice" as a threshold to demonstrating an administrative violation under that section and, therefore, a definition of the term is unnecessary."

*Page 11880,* right column, seventh paragraph, tenth line

The word "it" should be "its" in the last sentence of the agency response. The end of the sentence should read: "...public information on its website when it believes the information is of value to system participants."

*Page 11882,* left column, fourth paragraph, ninth line

The phrase "impairment ratings as and when appropriate" in the last sentence should read "impairment ratings when appropriate."

*Page 11885,* left column, first paragraph

In the seventh line, the word "rails" should be "fails." In the fourteenth line, the phrase "- and to their agents" should be deleted. The paragraph should read as follows:

"...violates a Commissioner rule or fails to comply with a provision of the Act. Labor Code §415.0036 applies to sanctions against insurance adjusters, case managers, or other persons who have the authority under the Act to request the performance of a service affecting the delivery of benefits to an injured employee or who actually performs such a service, including peer reviews, performance of required medical examinations, or case management."

*Page 11897,* §180.22(c)(5)

The word "the" should be "an" and the word "as" should be "when". The paragraph should read:

"(5) examine an injured employee to determine a date of maximum medical improvement and assign impairment ratings when appropriate."

*Page 11900,* §180.26(b)

A colon should appear at the end of subsection (b) instead of a period. The text should read:

"(b) The division may impose the following sanctions against a doctor or insurance carrier for any reason listed in Labor Code §408.0231(c) or any other criteria the commissioner considers relevant:"

*Page 11900,* §180.26(b)(6)

The word "decision" should be changed to "decisions". The last line should read:

"...to ensure that appropriate health care decisions are reached under applicable regulations by the department and the division, the Act, and Chapter 4201, Insurance Code; and"

*Page 11901,* §180.27(d)(1)(B), ninth line

The word "the" should be inserted between the words "of" and "privileges". The sentence should read as follows:

"Within 15 days after receiving the notice, a doctor may file a response that addresses the reasons given in the recommendation to deny lifting the sanction(s) or restoration of some or all of the privileges removed or restricted by the sanction(s)."

TRD-201100131

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## Texas Department of Motor Vehicles

### Request for Proposals - Consulting Services

The Texas Department of Motor Vehicles (department or TxDMV) announces a Request for Proposals (RFP) for consulting services, pursuant to Government Code, Chapter 2254, Subchapter B. The term of the contract will be from contract award to August 31, 2011. The RFP will be released on or about January 21, 2011, via the Electronic State Business Daily (ESBD) website at http://esbd.cpa.state.tx.us/.

PURPOSE

The department is seeking an independent, top-down study of the department to evaluate appropriateness of organizational structure, to optimize performance, to improve quality, to promote the effective and efficient use of resources, and to assist in the identification of future resource needs.

TxDMV wants a qualified entity to conduct an organizational cultural analysis and an efficiency review of the current TxDMV organizational structure. The organizational cultural analysis will include a cultural and SWOT (strengths, weaknesses, opportunities, and threats) analysis. Understanding the department's culture, as well as the strengths, weaknesses, opportunities, and threats, is critical to being able to successfully weave the department and its employees together quickly, so that productivity and customer service are uninterrupted.

TxDMV wants a qualified entity to determine if TxDMV is structured in an efficient and effective manner to be an independent, retail-oriented, economic development engine that serves the State of Texas as a whole. The review shall also evaluate the impact of any changes to the department's responsibilities resulting from the 82nd Legislative Session.

The selected vendor's services will involve review, analysis, and recommendations.

The intent of this proposed procurement is to analyze the agency's culture, strengths, weaknesses, threats, and opportunities and to identify potential efficiency gains and cost reductions as a result of possible organizational restructuring and process realignment to obtain maximum efficiency. The TxDMV Board and Executive Management's goal is to ensure the TxDMV organizational structure fully supports its business needs and management plans, as well as meeting the department's mission, vision, and goals.

EVALUATION CRITERIA AND SCORING

The department will comply with §2254.027 of the Texas Government Code regarding the selection of a consultant. Section 2254.027 states as follows:

In selecting a consultant, a state agency shall:

1. Base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and

2. If other considerations are equal, give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

The evaluation criteria and review process are further described in the complete RFP, which will be posted on or about January 21, 2011, on the ESBD website at http://esbd.cpa.state.tx.us/. Using a defined scoring matrix, TxDMV will score the proposals that are not disqualified. TxDMV reserves the right to negotiate with the vendor(s) after scoring.

The department reserves the right to accept or reject any or all proposals submitted. The department is not obligated to execute a contract on the basis of this notice or the posting/distribution of any RFP. The department will not pay for any costs incurred by any entity in responding to this notice or the RFP.

DEADLINE FOR PROPOSALS

The anticipated closing date for the receipt of proposals is February 21, 2011, at 5:00 p.m.

The department reserves the right to change the deadline listed herein.

PROCUREMENT PROCESS

This proposed procurement is contingent on a delegation of authority from the State Auditor's Office and a Finding of Fact from the Governor's Office.

The department reserves the right in its sole discretion to amend this RFP to clarify, revise, supplement, or delete any provision or to add new provisions. In the event that a revision to the RFP becomes necessary, an addendum will be posted on the ESBD website at http://esbd.cpa.state.tx.us/. It is the responsibility of respondents to check the ESBD site frequently for any changes to the RFP.

In the event of a conflict between this notice and the posting on the ESBD, the posting on the ESBD controls.

Any parties interested in obtaining a complete copy of the RFP should go to the ESBD website at http://esbd.cpa.state.tx.us/ and download the RFP or contact the department Point of Contact below. Any correspondence regarding procurement issues (including cost, responses, etc.) for this RFP prior to the award of any contract shall be made in writing only to the department Point of Contact listed below.

DEPARTMENT POINT OF CONTACT

David Chambers, Director of Purchasing

Texas Department of Motor Vehicles

4000 Jackson Avenue

Austin, TX 78731

Telephone number: (512) 465-7650

Fax: (512) 465-7532

E-mail: David.Chambers@txdmv.gov

TRD-201100125
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Filed: January 12, 2011

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## North Central Texas Council of Governments

### Request for Statement of Qualifications and Interest for In-plant Inspection Services for Americans with Disabilities Act Cut-A-Way Chassis Buses and Minivans

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG is seeking a qualified individual and/or firm to provide in-plant inspection services for seventeen (17) to twenty (20) Americans with Disabilities Act (ADA) cut-a-way chassis buses and seventeen (17) to twenty (20) ADA minivans in calendar year 2011, with the option to purchase additional inspection services for one (1) to three (3) additional ADA cut-a-way chassis buses in calendar year 2012.

The selected individual and/or firm shall oversee the manufacturing of the vehicles on-site and will be responsible for ensuring the manufacturing meets Federal Transit Administration (FTA) requirements, including Buy America and Federal Motor Vehicle Safety Standards, as well as NCTCOG specifications. The vehicles are anticipated to enter production in April or May 2011. Funding for this project is provided by the FTA through the American Recovery and Reinvestment Act of 2009, Urbanized Area Formula, Job Access/Reverse Commute and New Freedom federal grant programs.

Due Date

Statement of Qualifications and Interest must be received no later than 5:00 p.m., Central Daylight Time, on Friday, February 4, 2011, by mail or email to Juanita Bridges, Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011, jbridges@nctcog.org. Copies of the Statement of Qualifications and Interest will be available at http://www.nctcog.org/trans/admin/rfp by the close of business on Friday, January 21, 2011.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

Contract Award Procedures

The individual and/or firm selected will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Statement of Qualifications and Interest. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit qualifications in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-201100130
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: January 12, 2011

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## Texas Public Finance Authority

### Notice of Public Hearing - Cosmos Foundation, Inc. Education Revenue Bonds, Series 2011A

Notice is hereby given of a public hearing to be held on behalf of the Texas Public Finance Authority Charter School Finance Corporation on February 4, 2011, at 10:00 a.m. in the Conference Room, Suite 411 at the Texas Public Finance Authority, William P. Clements State Office Building, 300 W. 15th St., Austin, Texas, 78701 with respect to the captioned bonds (the "Bonds") to be issued in a principal amount not to exceed $90,000,000 by the Texas Public Finance Authority Charter School Finance Corporation. The proceeds of the Bonds will be loaned to Cosmos Foundation, Inc., a Texas non-profit corporation (the "School") for the following purposes (items 1 through 45 below are herein referred to as the "Project"):

(1) financing certain costs for site improvements, design, construction, renovation, and/or equipment of educational facilities, including the construction of an approximately 14,000 square foot building, all located at Harmony Science Academy - Bryan/College Station, 2031 S. Texas Ave., Bryan, Texas 77802;

(2) financing certain costs for site improvements, design, construction, renovation and/or equipment of educational facilities, including the construction of an approximately 42,000 square foot building, all located at the Harmony School of Nature, corner of Camp Wisdom Road and Eagle Ford Drive, Dallas, Texas 75249;

(3) financing certain costs for site improvements, design, construction, renovation, and/or equipment of educational facilities, including the construction of an approximately 73,395 square foot building, all located at the Harmony School of Fine Arts, 9185 Kirby Dr., Houston, Texas 77054;

(4) financing certain costs for site improvements, design, construction, renovation and/or equipment of educational facilities, including the construction of an approximately 10,000 square foot building, all located at the Harmony Science Academy - Lubbock, 1516 53rd Street, Lubbock, Texas 79412;

(5) financing certain costs for site improvements, design, construction, renovation and/or equipment of educational facilities, including the construction of an approximately 74,700 square foot building, all located at the Harmony School of Excellence - San Antonio, Northwest corner of Montgomery Drive and Glen Mont, approximately 0.50 miles West of Farm-to-Market Road 1976, Bexar County, Texas;

(6) financing certain costs for the acquisition of land and the design, construction, renovation, and/or equipment of educational facilities, including the construction of an approximately 67,352 square foot building, all located at the Harmony School of Science NW, 3100 North Sam Houston Parkway West, Houston, Texas 77038;

(7) financing certain costs for site improvements, design, construction, renovation and/or equipment of educational facilities, including the construction of an approximately 59,500 square foot building, all located at the Harmony School of Innovation, 9317 W. Sam Houston Pkwy., Houston, Texas 77099;

(8) financing certain costs for site improvements, design, construction and renovation and/or equipment of educational facilities, including the construction of an approximately 13,000 square foot building, all located at the Harmony School of Ingenuity, 10555 Stella Link Road, Houston, Texas 77025;

(9) financing certain costs for the acquisition of land and the design, construction, renovation and/or equipment of educational facilities, including the construction of an approximately 65,000 square foot building, all located at the Harmony School of Political Sciences and Communication, 13175 Research Blvd. (Hwy. 183 North) - frontage on Hwy. 183 between Hunters Chase Road and Anderson Mill Road, Austin, Texas;

(10) financing certain costs for site improvements, design, construction, renovation and/or equipment of educational facilities, including the construction of an approximately 65,000 square foot building, all located at the Harmony School of Advancement - Houston, corner of NE W. Airport Blvd. and Eldridge, Sugar Land, Texas 77478;

(11) financing and reimbursing certain costs for the acquisition of an existing building, site improvements, design, construction, renovation, and/or equipment of educational facilities, all located at the Harmony Science Academy - Houston, 5435 S. Braeswood Blvd., Houston, Texas 77096;

(12) financing certain costs for site improvements, design, construction, renovation and/or equipment of educational facilities, including the construction of an approximately 22,000 square foot building, all located at the Harmony Science Academy - Austin, 930 E. Rundberg Lane, Austin, Texas 78753;

(13) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony School of Excellence - Austin, 2100 E. St. Elmo Rd., Austin, Texas 78744;

(14) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - North Austin, 1421 Wells Branch Pkwy, Suite 200, Pflugerville, Texas 78660;

(15) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony School of Innovation - Dallas, 1024 Rosemeade Pkwy, Carrollton, Texas 75007;

(16) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony School of Innovation - El Paso, 5210 Fairbanks Dr., El Paso, Texas 79924;

(17) financing and reimbursing certain costs for the construction, renovation, and/or equipment of educational facilities, all located at the Harmony Science Academy - Dallas, 11995 Forestgate Drive, Suite 100, Dallas, Texas 75243;

(18) financing and reimbursing certain costs for the construction, renovation, and/or equipment of educational facilities, all located at the Harmony School of Discovery - Houston, 6270 Barker Cypress Road, Houston, Texas 77084;

(19) financing and reimbursing certain costs for the construction, renovation, and/or equipment of educational facilities, all located at the Harmony Science Academy - Garland, 2302 Firewheel Pkwy., Garland, Texas 75040;

(20) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - Northwest, 16200 Tomball Pkwy., Houston, Texas 77086;

(21) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony School of Excellence, 7340 N. Gessner Dr., Houston, Texas 77040;

(22) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony School of Excellence - Endeavor, 5668 West Little York Road, Houston, Texas 77091;

(23) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony School of Science - Houston, 13415 West Bellfort, Sugar Land, Texas 77478;

(24) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony School of Science - Austin, 11800 Stonehollow Dr., Austin, Texas 78758;

(25) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - Fort Worth, 5651 Westcreek Dr., Fort Worth, Texas 76133;

(26) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - Grand Prairie, 1102 NW 7th Street, Grand Prairie, Texas 75050;

(27) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - Euless, 701 S. Industrial Blvd., Euless, Texas 76040;

(28) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - El Paso, 9405 Betel Dr., El Paso, Texas 79907;

(29) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - San Antonio, 8505 Lakeside Parkway, San Antonio, Texas 78245;

(30) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - Beaumont, 4055 Calder Avenue, Beaumont, Texas 77706;

(31) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - Waco, 1900 North Valley Mills Drive, Waco, Texas 76710;

(32) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - Brownsville, 1124 Central Blvd., Brownsville, Texas 78520;

(33) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - Laredo, 4401 San Francisco Ave., Laredo, Texas 78041;

(34) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony School of Political Sciences and Communication, corner of FM 620 Road and Lake Creek Parkway, Williamson County, Austin, Texas 78717;

(35) financing certain costs for site improvements, design, construction, renovation, and/or equipment of educational facilities, including the construction of an approximately 50,000 square foot building, all located at Harmony School of Language - Houston, Westpark Tollway@Grand Parkway, Katy, Texas;

(36) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at the Harmony School of Political Sciences and Communication - Austin, Section of Lake Creek Parkway and FM 620 Road, North, Austin, Texas 78717;

(37) financing certain costs for the acquisition of land and the design, construction, renovation, and/or equipment of educational facilities, including the construction of an approximately 48,000 square foot building, all located at the Harmony School of Innovation - Fort Worth, 8080 W. Cleburne Road, Fort Worth, Texas;

(38) financing certain costs for site improvements, design, construction, renovation and/or equipment of educational facilities, including the construction of an approximately 48,000 square foot building, all located at the Harmony School of Nature - Houston, NWC Grand Parkway and Colony Parkway, Katy, Texas;

(39) financing and reimbursing certain costs for the construction and renovation and/or equipment of educational facilities, all located at the Harmony Science Academy - Odessa, 2755 N. Grandview, Odessa, Texas 79762;

(40) financing certain costs for the acquisition of land and the design, construction, renovation and/or equipment of educational facilities, including the construction of an approximately 48,000 square foot building, all located at the Harmony School of Business, S.H. 190 and Frankford Road, Collin County, Texas;

(41) financing and reimbursing certain costs for the construction, renovation, and/or equipment of educational facilities, all located at the Harmony Science Academy - Dallas High, 12005 Forestgate Dr., Dallas, Texas 75243;

(42) financing and reimbursing certain costs for the construction, renovation, and/or equipment of educational facilities, all located at the Harmony School of Innovation - Dallas, 1024 W. Rosemeade, Carrollton, Texas 76040;

(43) refinancing short term loans incurred for the construction, renovation and/or equipment of various education facilities;

(44) funding a debt service reserve fund or the purchase of a Reserve Fund Surety Policy and capitalized interest; and

(45) paying the costs of issuance of the Bonds.

The initial and exclusive operator of the Project and the educational facilities is and will be the School.

The public hearing will be conducted by Susan Durso, General Counsel of the Texas Public Finance Authority, or her designee (the "Hearing Officer"). All interested persons are invited to attend such public hearing to express their views with respect to the above-described project and the Bonds. Questions or requests for additional information may be directed to Thomas A. Sage, Esq., (telephone: (713) 220-3833). Any interested persons unable to attend the hearing may submit their views in writing to the Hearing Officer prior to the date scheduled for the hearing at fax number (713) 238-5040. This notice is published and the hearing is to be held in satisfaction of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

TRD-201100132
Susan Durso
General Counsel
Texas Public Finance Authority
Filed: January 12, 2011

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## Public Utility Commission of Texas

### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on January 5, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable to Amend its State-Issued Certificate of Franchise Authority, Project Number 39041.

The requested amendment is to expand the service area footprint to include the city of Rio Bravo, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 39041.

TRD-201100042
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 7, 2011

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### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on January 7, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Grande Communications Networks, LLC to Amend its State-Issued Certificate of Franchise Authority, Project Number 39050.

The requested amendment is to expand the service area footprint to include the unincorporated areas of McLennan County, Texas as specified in the application.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 39050.

TRD-201100109
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 11, 2011

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### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on January 7, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cameron Communications L.L.C. to Amend its State-Issued Certificate of Franchise Authority, Project Number 39052.

The application seeks an amendment for a transfer in ownership/control to reflect the acquisition of Cameron Communications L.L.C. by Cameron Holdings of North Carolina, LLC, which is wholly controlled by American Broadband Communications, LLC.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 39052.

TRD-201100111
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 11, 2011

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### Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on January 7, 2011, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of James Cable, LLC for a State-Issued Certificate of Franchise Authority, Project Number 39051.

The requested CFA service area consists of the municipality of Bowie, Texas and all of the territory outside the municipality of Bowie, Texas, within three miles of the municipality of Bowie, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 39051.

TRD-201100110

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 11, 2011

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## Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 7, 2011, for retail electric provider (REP) certification, pursuant to §39.352 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Veteran Energy, LLC for Retail Electric Provider Certification Pursuant to P.U.C. Substantive Rule §25.107, Docket Number 39049.

Applicant's requested service area is for the geographic area of the entire State of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 39049.

TRD-201100108
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 11, 2011

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## Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on January 10, 2011, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County (Su Clinica Familiar). Docket Number 39055.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville. BPUB received a letter request from Oscar Garcia, Su Clinica Familiar, requesting BPUB to provide electric utility service to property located at 105 E. Alton Gloor Boulevard, Brownsville, Texas. The estimated cost to BPUB to provide service to this proposed area is $29,891.89. If the application is granted the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than February 4, 2011, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 39055.

TRD-201100112
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 11, 2011

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## Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Ganado Telephone Exchange, Inc.'s (Ganado) application filed with the Public Utility Commission of Texas (commission) on December 28, 2010, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Ganado Telephone Exchange, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171, Tariff Control Number 39026.

The Application: On December 28, 2010, Ganado Telephone Company, Inc. (Ganado) filed an application with the Public Utility Commission of Texas (commission) to implement minor rate changes to its Residential and Business Local Exchange Access Services. The proposed effective date is May 1, 2011. The estimated annual revenue increase recognized by Ganado is $29,359 or 1.53% of its gross annual intrastate revenues.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by March 14, 2011, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by March 14, 2011. Requests to intervene should be filed with the commission's filing clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 39026.

TRD-201100107
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 11, 2011

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## Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of La Ward Telephone Exchange, Inc.'s (La Ward) application filed with the Public Utility Commission of Texas (commission) on December 28, 2010, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: La Ward Telephone Exchange, Inc. for Approval of a Minor Rate Change Pursuant to Substantive Rule §26.171, Tariff Control Number 39027.

The Application: On December 28, 2010, La Ward Telephone Exchange, Inc. (La Ward) filed an application with the commission to implement minor rate changes to its Residential, Business, and DID/DOD Local Exchange Access Services. La Ward also intends to increase its Service Order, DID Number Block Rates, and several Optional Service and Feature charges. The proposed effective date is May 1, 2011. The

estimated annual revenue increase recognized by La Ward is $23,923 or 3.41% of La Ward's gross annual intrastate revenues.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by March 14, 2011, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by March 14, 2011. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 39027.

TRD-201100045
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 7, 2011

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## Texas Department of Transportation

### Aviation Division - Request for Proposal for Professional Engineering Services

The City of Sonora, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Sonora Municipal Airport during the course of the next five years through multiple grants.

**Current Project:** City of Sonora. TxDOT CSJ No.: 1107SONOR.

Repair apron; install culvert under parallel taxiway; drainage improvements along runway and ditch along west property line; enlarge four downstream culverts along I-10 frontage road; replace/relocate fueling station; replace rotating beacon and tower; and install lighted windcone and segmented circle.

The HUB goal for the current project is 12%. TxDOT Project Manager is Ed Mayle.

Future scope work items for engineering/design services within the next five years may include the following:

1. Engineering/design for apron and runway
2. Overlay Apron
3. Overlay and mark Runway 18-36
4. Construct paved shoulders
5. Overlay and mark north parallel Taxiway
6. Overlay and mark stub Taxiway
7. Overlay and mark south Taxiway

The City of Sonora reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Sonora Municipal Airport." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/business/projects/aviation.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

**Please note:**

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than February 15, 2011 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Becky Vick.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at http://www.txdot.gov/business/projects/aviation.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Becky Vick, Grant Manager. For technical questions, please contact Ed Mayle, Project Manager.

TRD-201100122
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 12, 2011

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### Aviation Division - Request for Proposal for Professional Engineering Services

Jim Hogg County, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254,

Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

Airport Project: Jim Hogg County. TxDOT CSJ No.: 1121HEBRN. Scope: Provide engineering/design services to construct game proof perimeter fence with gate and threshold sighting surface obstruction lights.

The DBE is 6%. TxDOT Project Manager is Ed Mayle.

To assist in your proposal preparation the criteria, 5010 drawing, project description, and most recent Airport Layout Plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Jim Hogg County Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/business/projects/aviation.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

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The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at http://www.txdot.gov/business/projects/aviation.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Becky Vick, Grant Manager. For technical questions, please contact Ed Mayle, Project Manager.

TRD-201100123
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 12, 2011

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## Notification of Industry Review Period - Draft Specification for Toll Operations and Customer Service Center Operators

Pursuant to Transportation Code, §228.052, the Texas Department of Transportation (department) may enter into an agreement with one or more persons to provide personnel, equipment, systems, facilities, and services necessary to operate a toll project or system, including the operation of toll plazas and lanes and customer service centers and the collection of tolls. The Texas Transportation Commission has promulgated rules located at Title 43, Texas Administrative Code, §27.83 governing the requirements for soliciting proposals to operate a department toll project or system. Through this notice, the department is exploring options for procuring services from a prime vendor with high quality systems to support the operation of the customer service center and toll plazas for current and future toll facilities in Texas.

This draft specification is intended to elicit discussions between the department and the vendor community. Interested parties will review the contents of the draft specification for Toll Operations and Customer Service Center Operators. After review, interested parties will contact Ms. Kathy Garrett, Texas Department of Transportation, Turnpike Authority Division, by phone at (512) 874-9723 or via email: Kathy.Garrett@txdot.gov in order to schedule an individual pre-proposal teleconference with the department. Participation in a pre-proposal teleconference is optional and is not a prerequisite to responding to the formal Request for Proposal (RFP). However, participation in a pre-proposal teleconference may provide the vendor opportunities, in an informal forum, to discuss the procurement process and general questions regarding the draft specification with department officials.

Interested parties should contact Ms. Garrett from 9:00 a.m. (CT) Monday, January 24, 2011 until 5:00 p.m. (CT) Friday, January 28, 2011 to schedule a pre-proposal teleconference. The teleconferences will be scheduled for the week of January 31, 2011 through February 4, 2011.

The department is providing this material to allow the vendor community to preview the draft specification, which consists of the Instructions to Proposers, form of contract, and Technical Provisions for this project, in advance of responding to the formal RFP. A formal RFP will be issued at a later date.

The industry review draft specification will be available on the following website: http://www.txdot.gov/business/projects/toll_ops.htm or by contacting Ms. Garrett, 4616 Howard Lane, Austin, Texas 78758; telephone: (512) 874-9723; email: Kathy.Garrett@txdot.gov.

TxDOT has operated toll roads in Texas since 2006. Additional information regarding facility background and descriptions can be researched at http://www.texastollways.com.

TRD-201100124
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 12, 2011

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## Request for Proposals - Outside Counsel

The Texas Department of Transportation (department) issues this request for proposals (RFP) for the purpose of identifying qualified law firms interested in providing legal representation to the department and the Texas Transportation Commission (commission) on matters relating to the acquisition, lease, maintenance, construction, operation, and management of railroad lines and other rail facilities, including, but not

limited to, abandoned railroad lines and acquisition of rail corridors and railroad rights of way for rail, highway, or other transportation facilities. Selection of outside counsel will be made by the department's General Counsel. The Office of the Attorney General must approve the General Counsel's selection before outside counsel may be employed.

Description: The department is a state agency that is obligated by state law to consider the advisability of acquiring rail lines that have been proposed for abandonment or discontinuance of service or taking other action necessary to provide for continued rail or other transportation uses over the rail lines. Additionally, the department regularly considers acquiring rail corridors, rail facilities, and railroad rights of way for rail, highway, or other transportation projects. The department is authorized under state law to acquire, finance, construct, maintain, and operate a passenger or freight rail facility, individually or as one or more systems. The department intends to engage outside counsel to advise and represent the agency on matters relating to the acquisition, lease, maintenance, construction, operation, and management of railroads and other rail facilities, including trackage rights and service issues, and the acquisition of rail corridors, rail facilities, and railroad rights of way. Outside counsel will provide legal advice concerning the department's rights and obligations with respect to a rail carrier's abandonment of or discontinuance of service on a rail line, including requirements relating to interim trail use, rail banking, and termination of trail use under 16 U.S.C. §1247(d) and implementing regulations, as well as the handling of claims resulting from rail banking and termination of trail use. Outside counsel will also be expected to advise and perform work for the department generally regarding the department's responsibilities under applicable federal and state laws relative to rail and rail transportation, including reviewing legislation and administrative rules when requested by the department. Outside counsel will represent the department in any necessary proceeding before the Surface Transportation Board and in negotiations with rail operators, construction companies, financial institutions, maintenance companies, and lessees. Accordingly, the department invites responses to this RFP from firms that are qualified to perform these legal services. Outside counsel engaged by the department must have considerable prior experience with, as well as extensive knowledge of, these subjects.

Responses: Responses to the RFP may be submitted by an individual law firm, attorney, or joint venture between two or more law firms and/or attorneys. Responses to the RFP should include at least the following information: (1) a description of the firm's qualifications for performing legal work in the matters described previously, the names, experience, education, and expertise of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and other firm personnel who will be assigned to work on these matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of these legal services; (2) information relative to the capabilities, location(s), and resources of the firm's offices that might serve the department's requirements, including a summary of physical resources that would be assigned to the department, and an organizational chart indicating the relevant areas of responsibility of each attorney assigned to work on these matters; (3) the submission of fee information (either in the form of hourly rates for each attorney and paralegal who will be assigned to perform services in relation to these matters or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) an abstract of the firm's cost control procedures and how it charges for its services; (5) a comprehensive description of the procedures used by the firm to supervise the provision of legal services in a timely and cost effective manner; (6) disclosure of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the department or to the State of Texas or any of its agencies); and (7) confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Attorney General of the State of Texas.

Note: The department is particularly concerned with issues pertaining to any conflict of interest. Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address such conflicts.

A copy of the standard outside counsel contract is available on request. Certain terms of the contract may be negotiated by the parties, subject to approval by the Office of the Attorney General.

Format and Person to Contact: Two copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8-1/2 inch by 11 inch paper with all pages sequentially numbered and either stapled or bound together. It should be sent by mail or delivered in person, marked "Response to Request for Proposal," and addressed to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, contact Angie Parker, Associate General Counsel, at (512) 463-8630.

Deadline for Submission of Response: All proposals must be received by the Texas Department of Transportation at the previously stated address no later than 5:00 p.m. on February 22, 2011.

TRD-201100044
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 7, 2011

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## University of North Texas

Public Notice - Award of Major Consulting Contract

**Description of Activities Consultant Will Conduct:**

The selected consulting firm will be responsible for assisting University of North Texas (UNT) in market research studies on two proposed graduate professional programs at the UNT. The consulting services include evaluation, assessment, and recommendations for a Master of Science in Engineering Management and Professional Master of Business Administration.

**Name and Business Address of Consultant:**

Creative Consumer Research

3945 Greenbriar

Stafford, Texas 77477

**Total Value and Beginning and Ending Dates of Contract:**

Value: $57,500.00

Beginning Date: December 10, 2010

Ending Date: August 31, 2011

**Dates on which Documents, Films, Recordings, or Reports that Consultant is required to present are due:**

Date: Consultant is required to conduct several surveys with a final written report to be completed at the end of the project.

TRD-201100029

Carrie Stoeckert
Assistant Director of Bids and Contracts
University of North Texas
Filed: January 5, 2011

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## Stephen F. Austin State University

Notice of Consultant Contract Availability

This request for consulting services is filed under the provisions of the Government Code, Chapter 2254.

Stephen F. Austin State University, Nacogdoches, Texas, requests responses from individuals to provide consulting services as requested for Banner and Oracle functional subject matter and technical assistance including, but not limited to, general consulting and support services for business process analysis services, information technology strategic planning and change management services, as well as functional and technical services for all modules of the SunGard Higher Education Banner system and associated products. The University has received some initial consulting and desires to award the contract for consulting services to Strata Information Group unless a better offer is received, pursuant to Government Code §2254.029(b).

Proposals must be received in the office of Diana Boubel, Director of Procurement, Stephen F. Austin State University, P.O. Box 13030 SFA Station, Nacogdoches, Texas 75962 by February 14, 2011 in order to be considered. Please contact Diana Boubel at (936) 468-4037 or dboubel@sfasu.edu for further information.

TRD-201100088
Damon C. Derrick
General Counsel
Stephen F. Austin State University
Filed: January 10, 2011

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## Texas Water Development Board

Public Comment Notice for Amended State Fiscal Year 2011 Clean Water State Revolving Fund and Drinking Water State Revolving Fund Intended Use Plans

The Texas Water Development Board (TWDB) will hold a period of public review and comment on draft amendments to the State Fiscal Year (SFY) 2011 Clean Water State Revolving Fund (CWSRF) Intended Use Plan (IUP) and the Drinking Water State Revolving Fund (DWSRF) IUP. The period of public review and comment for the draft amended CWSRF and DWSRF IUPs will begin on January 21, 2011 and end on February 22, 2011.

The draft amended CWSRF IUP contains revisions to the point values assigned to existing rating criteria and the addition of effective management rating criteria to be implemented in the SFY 2012 funding cycle. The draft amended SFY 2011 CWSRF IUP has been prepared pursuant to rules adopted by the TWDB in 31 Texas Administrative Code (TAC) Chapter 375.

The draft amended DWSRF IUP contains a bypass procedure giving priority to projects deemed ready to proceed to be implemented in the SFY 2011 funding cycle. It also contains revisions to the point values assigned to existing rating criteria and the addition of effective management rating criteria to be implemented in the SFY 2012 funding cycle. The draft amended SFY 2011 DWSRF IUP has been prepared pursuant to the rules adopted by the TWDB in 31 TAC Chapter 371.

Interested persons are encouraged to submit relevant and material comments concerning the draft amended IUPs. Persons may submit written comments to Ms. Stacy Barna, Director, Program Development, Texas Water Development Board, P.O. Box, 13231, Austin, Texas 78711, or may email comments to *iupcomments@twdb.state.tx.us.* Comments may also be received online utilizing an electronic form located at www.twdb.state.tx.us/apps/iup. Comments and supplemental information will only be accepted by electronic submission at the addresses stated or by written comments to Ms. Barna. Any comments and supplemental information must be received by 5:00 p.m. central standard time, February 22, 2011, to be considered. Interested persons also may review the draft amended CWSRF and DWSRF IUPs at the TWDB's website at *www.twdb.state.tx.us/assistance/financial/fin_infrastructure/cwsrffund.asp* and *www.twdb.state.tx.us/assistance/financial/fin_infrastructure/dwsrf.asp* respectively.

TRD-201100127
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: January 12, 2011

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## How to Use the Texas Register

**Information Available**: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules**- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite**: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

**How to Research**: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite**: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update**: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

**TITLE 1. ADMINISTRATION**
***Part 4. Office of the Secretary of State***
**Chapter 91. Texas Register**
40 TAC §3.704.....950 *(P)*